IN THE

Supreme Court of the United States

..... Term, 19.....

No. 75-6341

MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M. E. URRA, J. STEWART HARRISON, JOHN W. ROACH, JR., and CHARLES K. JOHNSON,
Petitioners,

VS.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TOM CARTER,
Counsel for Petitioners
1726 Fulton National Bank Bldg.
Atlanta, Georgia 30303
404—688-7026

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Continued)

IN THE

SUPREME COURT OF THE UNITED STATES

..... Term, 19.....

No. .....

MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M. E. URRA, J. STEWART HARRISON, JOHN W. ROACH, JR., and CHARLES K. JOHNSON,

Petitioners,

VS.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners here were plaintiffs in the lower district court, and were appellant in the Fifth Circuit Court of Appeals below. Petitioners pray that a Writ of Certiorari issue to review the final judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on July 29, 1975.

I. OPINIONS BELOW

The opinion in this case of the District Court for the Northern District of Georgia, Atlanta Division, (No.C74-1780A) was rendered on February 4, 1975, and a true and correct copy of that court's judgment and opinion is appended hereto as Appendix A.

The final judgment and opinion of the United States Court of Appeals for the Fifth Circuit, sustaining the lower district court, was made and entered on July 29, 1975, and the same is reported at 517 F 2d 478; And, a true and correct copy thereof is appended hereto as Appendix B. Said judgment of the Fifth Circuit Court of Appeals issued as the court's mandate on August 20, 1975.

II. JURISDICTION

This petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit, seeks to review that court's said final judgment of July 29, 1975 (appended as Appendix B) which affirms the lower district court's judgment of dismissal (Appendix A) of petitioners' Complaint in the court. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

III. QUESTIONS PRESENTED FOR REVIEW

Did the lower courts correctly hold that the district court lacked subject matter jurisdiction based upon the conclusion that exclusive jurisdiction of the subject matter was in the National Mediation Board (herein the Board) under the Railway Labor Act (herein, Act). notwithstanding the Board's prior express determination (see Appendix C) that it lacked jurisdiction to adjudicate petitioners' following claim:

> That IAM, the respondent labor organization (which had previously been certified by the Board pursuant to provisions of the Act to represent petitioners' certified employmental collective bargaining craft) violated its lawful duty of fair representation owed petitioners; through IAM's manner and method of representing petitioners said certified bargaining craft—not as a separate certified bargaining craft, but merely as a small part of a single and substantially larger uncertified and heterogeneous collective bargaining class of sundry employees of petitioners' employer, in a single process for all collective bargaining purposes.

More specifically, did the lower court correctly hold that petitioners' said claim constitutes a ". . . dispute . . . among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of . . . (the Act)" within the meaning of Section 2, Ninth of the Railway Labor Act as amended, 45 USC Section 152 (Ninth); so as to be within the exclusive jurisdiction of the Board to certify an appropriate collective bargaining craft or class of employees and the representative to represent them.

IV. STATUTES INVOLVED IN THIS CASE

(a) Section 2, Fourth of the Railway Labor Act, 45 USC Section 152, Fourth, provides in pertinent parts as follows:

> "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft

'or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this Chapter. . ."

(b) Section 2, Ninth, of the Railway Labor Act, 45 USC Section 152, Ninth, provides in pertinent parts the following:

"If any dispute shall arise among a carrier's employees as to who are representatives of such employees designated and authorized in accordance with requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier . . . in the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election . . . ."

V. STATEMENT OF THE CASE

A. *Summary of the Facts*

Petitioners are employees of Eastern Airlines (herein, Eastern), an air carrier subject to the provisions of the ACT. Petitioners are employed in a collective bargaining unit or craft of Eastern employees; which craft, in prior years, has been certified by the Board, pursuant to the provisions of the Act, to include principally Eastern's highly skilled and lawfully licensed airline mechanics, such

as petitioners, and also including certain smaller fringe groups of shop laborers, janitors, and ground service and cleaning employees (herein called PETITIONERS' CRAFT OR UNIT).

However, the last formal certification of petitioners' bargaining craft by the Board itself expressly EXCLUDED therefrom Eastern's numerous cargo and baggage handling employees, and sundry other employees.

The Board itself has never issued a formal certification, accompanied by a customary election among effected employees, for the inclusion of these aforesaid cargo and baggage handling employees and sundry other employees of Eastern into petitioners' certified bargaining craft.

As is often the case in the airline industry, the airline mechanics of Eastern were among the first ground employees to be organized and represented by IAM a number of years ago. And, historically the collective bargaining contracts between IAM and Eastern covering petitioners' bargaining craft, contain the usual unionshop provisions conditioning employment upon timely acquisition of union membership in IAM. Thus, any expansion of petitioners' bargaining craft and contract coverage, which could be achieved by IAM in bargaining with Eastern, would result in a corresponding increase in the union's dues paying membership among Eastern's employees, via the contract union shop provision.

During the years of IAM's representation of petitioners' bargaining craft, a growing number of Eastern's aforesaid cargo and baggage handlers and various other groups of Eastern's employees (having substantially lesser degrees of skill and training requirements for their jobs) have

been grouped together with petitioners' said bargaining craft by IAM into a single process of collective bargaining representation.

With the result, that petitioners' original certified bargaining craft has, become gradually absorbed into one big communalized and heterogeneous bargaining class of Eastern's employees; which is represented by IAM, in substance and manner, as one whole class or unit of employees for all purposes of collective bargaining; That has been placed by IAM under a single collective bargaining contract.

All employees in this said heterogeneous and communalized single bargaining class are permitted by IAM in an ongoing single collective bargaining process to vote on pertinent matters, affecting petitioners' employmental interests and careers, such as: collective bargaining contract ratification, the calling of strikes, the designation of bargaining negotiators to conduct bargaining negotiations, and the like.

IAM's said grouping of petitioners' original certified bargaining craft into this said heterogeneous bargaining class during recent years (without prior Board certification therefor), has resulted in petitioners' certified bargaining craft having only a numerically minority voice in all important employmental matters vitally affecting their employmental interests and careers.

As was noted by the lower district court in its Opinion (see Appendix A, Page 28), petitioners' earlier presentation to the NMB of their subject claim had resulted in the NMB's determination that it lacked jurisdiction to decide this controversy (Appendix C).

B. *Proceedings Below*

The subject complaint was filed by petitioners in September of 1974. On October 23, 1974, IAM filed its motion to dismiss alleging as ground one therein that: ". . . the Court does not have jurisdiction over the subject matter of the complaint." On February 4, 1975, the lower district court issued his ruling sustaining IAM's said jurisdictional ground for dismissal (Appendix A). The lower court expressly based its ruling upon its legal conclusion that the Board had exclusive jurisdiction over petitioners' claim, under Section 2, Ninth, of the Act, 45 USC Section 152 (Ninth).

In due course, petitioners perfected their appeal from the lower court's judgment of dismissal to the Fifth Circuit; which rendered its per curiam judgment of "affirmed" on July 29, 1975 (Appendix B). It is from this judgment of affirmance by the Fifth Circuit that petitioners seek this court's issuance of a writ of certiorari.

JURISDICTION IN THE LOWER DISTRICT COURT was based upon the allegation in the complaint that the subject matter of the controversy arises under the Act, 45 US Code, Section 151 et seq.; along with the allegation that the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interests and costs. Thus, original jurisdiction in the district court was based upon Section 1331 of Title 28 of the United States Code, as amended.

VI. REASONS WHY CERTIORARI SHOULD BE GRANTED

The Fifth Circuit has decided an important question of federal law in a way that would potentially and wrongfully deny tens of thousands of airline industry employees

access to the Federal Courts to correct violations of a lawful duty of fair representation owed them under the Federal Act by their respective collective bargaining representatives; and in a way which conflicts with an applicable analogous principle of law previously laid down by decisions of this court.

The lower court's ruling, that it lacked subject matter jurisdiction because petitioners' claim was found by the court to be within the exclusive jurisdiction of the Board under the Act, must be considered in the light of petitioners' basic claim set forth in their complaint, and stated below.

A. What Petitioners Seek Is Simply to Enjoy Right of Craft Organization and Craft Representation in Collective Bargaining as Sanctioned by the Act and the Board's Prior Certification

Petitioners claim that they, as well as the other employees in their Board certified bargaining craft are being denied by IAM their statutory rights that are conceptually stated in Section 2, Fourth, of the Act, 45 USC Section 152, Fourth, providing in pertinent parts as follows:

> "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class. . . ."

This denial of petitioners' said statutory craft organizational and craft representational rights stems from IAM's manner and method of collectively representing petitioners' Board certified bargaining craft, as but a minority part

of an overall heterogeneous single bargaining class of sundry Eastern employees (WITHOUT PRIOR BOARD CERTIFICATION OF SUCH A SINGLE HETEROGENEOUS CLASS) (see the Summary of Facts in the Statement of the Case, supra).

IAM's complained of manner of representing petitioners' certified bargaining craft, in effect abrogates the statutory concept of CRAFT organization and CRAFT collective bargaining. It also emasculates the Board's prior certification of petitioners' homogeneous bargaining craft consisting primarily of highly skilled and highly craft motivated employees such as petitioners, who are lawfully licensed career airline mechanics.

The plight of petitioners' certified bargaining craft may be compared to that of a mighty ship that is desirous and capable of charting its own course to its own more distant port of call; but instead is commandeered into a single large convoy of other smaller vessels, which is sailing perhaps to another port.

Petitioners find frustrating and humiliating irony in the circumstance that their own collective bargaining representative, IAM, would deny them their craft aspirations and status; notwithstanding that petitioners' bargaining craft is sanctioned by the Act, as well as by the Board's prior certification. While at the same time, the craft aspirations and the craft organizational and bargaining rights, of the laborers, the ironworkers, the electricians, the plumbers, the heavy equipment operators, etc., who build and maintain the hangers and airports in which petitioners perform their very highly skilled tasks, are preserved intact.

Petitioners claim essentially that IAM's complained of manner and method of representing them in collective bargaining in the context presented constitutes a violation of IAM's lawful duty for fair representation owed to petitioners, as their statutory collective bargaining representative under the Act. *Steele vs. Louisville & Nashville R. Co.*, 323 U.S. 192, 15 LRRM 708; *Tunstall vs. Brotherhood of Locomotive Firemen & Enginemen*, 323 U.S. 210, 15 LRRM 715; *Graham vs. Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232, 25 LRRM 2033; *Brotherhood of Railroad Trainmen vs. Howard*, 343 U. S. 768, 30 LRRM 2258; *Vaca vs. Sipes*, 386 U.S. 171, 190-93, 64 LRRM 2369 (1967); *Thompson vs. Brotherhood of Sleeping Car Porters*, 316 F. 2d 191, 198-99, 52 LRRM 2880 (4th Cir. 1963); *Gainey vs. Brotherhood of Railway & Steamship Clerks*, 313 F 2d 318, 324, 52 LRRM 2196 (3d Cir. 1963); *Cunningham vs. Erle R.R. Co.*, 266 F. 2d 411, 415-16, 44 LRRM 2093 (2d Cir. 1959); *Simberlund vs. Long Island Rail Road Company*, 421 F. 2d, 1219, 73 LRRM 2451 (CA 2, 1970).

B. What Petitioners Do Not Seek is any Infringement of the Board's Jurisdictional Functions

In no way do petitioners seek to intrude into the exclusive jurisdictional domain of the Board to determine and certify bargaining crafts or classes along with the unions to represent them. For here the Board has already spoken by certifying petitioners' said bargaining craft, and IAM to represent petitioners' certified craft.

Neither do petitioners dispute the status of IAM as the certified statutory collective bargaining representative for petitioners' craft.

Neither do petitioners question the legality of IAM's

lawful right to separately represent any of Eastern's cargo and baggage handlers or other sundry groups of Eastern's employees; who were not included by the Board in its certification of petitioners' bargaining craft; but who have been grouped by IAM along with petitioners' certified craft into a single overall heterogeneous bargaining class for all purposes of collective bargaining representation, as complained of by petitioners.

Indeed, it is petitioners who seek to give vitality and meaning to the Board's certification; by requiring IAM to honor the Board's prior certification of petitioners' bargaining representation of petitioners' bargaining craft, by simply recognizing and conducting it's collective bargaining representation by petitioners' bargaining craft in a manner and method consistent with, and called for by, the Board's certification; At least, UNTIL SUCH TIME AS THE BOARD ITSELF MIGHT THROUGH LAWFUL PROCESSES DECIDE TO MODIFY ITS CERTIFICATION OF PETITIONERS' BARGAINING CRAFT.

For the courts to fail to adjudicate petitioners subject claim is to hold that the statutory collective bargaining representative—and not the Board, has power to determine which employees may appropriately be included in a statutory collective bargaining craft or class for purposes of collective bargaining representation. But, such a conclusion is in direct contradiction to the plain provisions of the Act that the Board—and not the union, is to determine and certify the bargaining craft or class, found in Section 2, Ninth, of the Act, 45 USC Section 152 (Ninth).,

In affirming without comment the lower district's court judgment and opinion, the Fifth Circuit presumeably acted on the same apparent basic misapprehension of the factual and legal issue presented in this case, as did the district

court. For, the district court in its opinion (see Appendix A, page 27), indicated that plaintiff's claim is based:

> ". . . Solely on the ground that the NMB has 'communalized' into one bargaining unit the employees who rightfully should be part of another bargaining unit. This is the principal legal question the court is called upon to decide, and, as noted above, it is precisely this question of 'who represents whom' which is vested in the unreviewable discretion of the National Mediation Board."

But, as is pointed out herein, and as petitioners sought to point out to the lower courts, petitioners' claim makes no attack upon any action by the Board. Rather, petitioners' claim attacks only the manner and method utilized by IAM in representing, or misrepresenting, petitioners' Board certified bargaining craft.

Petitioners' claim seeks to acknowledge, honor, and adhere to the Board's prior certification of their bargaining craft; whereas, IAM has, through its complained of manner and method of collective bargaining representation of petitioners' bargaining craft, disregarded and undermined the Board's prior certification of petitioners' craft, usurping unto itself the Board's statutory jurisdiction and discretion in determining which employees should be included in a bargaining craft. And, in so doing, IAM has at the same time denied petitioners their statutory right of craft organization and craft collective bargaining representation under the Act.

C. The Board Itself Has Expressly Denied Any Jurisdiction to Adjudicate Petitioners' Subject Claim (Appendix C)

The lower district court in its opinion quoted the following language from the determination by the Board that it (the Board) did not have jurisdiction over petitioners' subject claim:

> " 'In reviewing your application for the Board's services, it does not appear that there is an allegation of the existence of a representation dispute as described in Section 2, Ninth, of the Railway Labor Act. Additionally, there is no allegation that the certified representative and the carrier are at a bargaining impasse concerning the matters contained in your application, and thus an invocation for the Board's mediatory services is not appropriate.
>
> " 'The National Mediation Board does not have jurisdiction to determine the manner in which a carrier and a union, certified for one or more crafts or classes, bargain, and thus the questions which you raise are not properly resolved by the National Mediation Board, but may be more effectively resolved by direct conferences between the affected parties.
>
> " 'Since there is no jurisdictional basis for the processing of your application in its present context, that is, failure to allege and demonstrate the existence of a representation dispute, the application is dismissed.' " (See District Court's opinion, Appendix A, Page 28).

The Board, unlike the lower district court and the Fifth Circuit, recognized and acknowledged its own inadequacy as a forum to adjudicate petitioners' basic claim of unfair

representation by IAM. To illustrate, let it be postulated that the Board had concluded that it did have jurisdiction of this claim (as held by the lower courts); and further, that it did agree with petitioners' basic complaint that IAM has unfairly represented petitioners; and further that IAM shall likely continue its said unfair representation of petitioners' certified bargaining craft. WHAT COULD THE BOARD DO ABOUT IT? FIRST of all, we know of no method by which the Board could award any compensatory or other damages for IAM's past unfair representation. SECOND, neither could the Board enjoin IAM from continuing such unfair representation of petitioners. AND THIRD, all the Board could do pursuant to its exclusive statutory jurisdiction, is to determine that petitioners' bargaining craft is appropriate and then certify petitioners' bargaining craft along with IAM as its statutory collective bargaining representative; But this would amount to only a redundant echo of what the Board has already done.

On the other hand, what would be the case if the lower court had asserted jurisdiction to adjudicate petitioners' said claim of unfair representation by IAM. FIRST, the court would not be called upon to determine either the appropriateness of petitioners' bargaining craft as an appropriate unit, or IAM's status as the craft representative, since the Board has already done this. SECOND, if the court determined that petitioners' claim was meritorious, then the court could award appropriate damages to cover any of petitioners' properly proven losses. AND THIRD, the court could insure that IAM would desist from its subject course of unfair representation of petitioners' bargaining craft, through exercise of the court's injunctive powers. Each of these said possible remedies by the court would have the effect of upholding and requiring adherence

to—and not departure from, what the Board had previously provided through its said certification of petitioners' bargaining craft and IAM as its representative.

D. Court Jurisdiction of Petitioners' Claim is Strongly Suggested By Prior Decisions of this Court Holding, that the Exclusive Jurisdiction of the Railroad Adjustment Board under the Act, did not Bar Court Jurisdiction to Decide Unfair Representation Cases Against Unions and Employers Jointly

The lower courts' denial of jurisdiction, to adjudicate petitioners' claim of unfair representation by IAM, runs counter to the analogous rationale of the Supreme Court announced in the following cases: *Conley vs. Gibson*, 355 U.S. 41, 44, LRRM 2089 (1957); *Glover vs. St. Louis-San Francisco Railway Company*, 393 U.S. 323, 70 LRRM 2097 (1969); *Czosek vs. O'Mara*, 397 U. S. 25, 73 LRRM 2481 (1970).

In the *Conley* case, supra, this court reversed the lower court's conclusion that exclusive jurisdiction lay in the Adjustment Board under Section 3 First (i) of the Railway Labor Act, 45 USC Section 153, First (i). The complaint there, as here, charged that the defendant statutory collective bargaining representative had unfairly represented plaintiffs. In this regard the court stated:

> "We hold that it was error for the courts below to dismiss the complaint for lack of jurisdiction. They took the position that Section 3 First (i) of the Railway Labor Act conferred exclusive jurisdiction on the Adjustment Board because the case, in their view, involved the interpretation and application of the collective bargaining agreement. But Section 3 First (i) by its own terms

applies only to 'disputes between an employee or group of employees and a carrier or carriers.' This case involves no dispute between an employee and employer but to the contrary is a suit by employees against the bargaining agent to enforce their statutory right not to be unfairly discriminated against by it in bargaining. The Adjustment Board has no power under Section 3 First (i) or any other provision of the Act to protect them from such discrimination. . . . ."

Moreover, notwithstanding the general rule that the Act places exclusive jurisdiction in the Railroad Adjustment Board, under Section 3 First (i) of the Act, to interpret the terms of a collective bargaining agreement; and notwithstanding that this Said Section 3 First (i) of the Act by its terms applies to ". . . disputes between an employee or group of employees and a carrier or carriers. . ."; nevertheless, employees may also JOIN THE CARRIER in a suit involving the terms of a collective bargaining contract, brought against their statutory collective bargaining representative for breach of its duty of fair representation. See the *Glover* case, supra, wherein the court said:

". . . In the present case . . . the plaintiffs sought relief not only against their union but also against the railroad, . . . it might at one time have been thought that the jurisdiction of the Railroad Adjustment Board remains exclusive in a fair representation case, to the extent that relief is sought against the railroad for alleged discriminatory performance of an agreement validly entered into and lawful in its terms. (See, e.g. *Hayes vs. Union Pacific Railroad Company*, 184

F 2d 337, 26 LRRM 2566 (CA 9, 1950), cert. denied, 340 U.S. 492, 27 LRRM 2456 (1951). This view however, was squarely rejected in the *Conley* case, where we said 'for the reasons set forth in the text, we believe (*Hayes*, supra) was decided incorrectly.' 355 U.S., at 44, N.4. . . . . Moreover, although the employer is made a party to insure complete and meaningful relief, it still remains true that in essence the 'dispute' is one between some employees on the one hand and the union and management together on the other, not one 'between an employee or a group of employees and a carrier or carriers.' FINALLY, THE RAILROAD ADJUSTMENT BOARD HAS NO POWER TO ORDER THE KIND OF RELIEF NECESSARY EVEN WITH RESPECT TO THE RAILROAD ALONE, IN ORDER TO END ENTIRELY ABUSES OF THE SORT ALLEGED HERE (emphasis added). The Federal Courts may therefore properly exercise jurisdiction over both the union and the railroad. (Citations omitted)."

In *Czosek*, this court said in an unfair representation case that:

". . . surely it is beyond cavil that a suit against the union for breach of its duty for fair representation is not within the jurisdiction of the National Railroad Adjustment Board nor subject to the ordinary rule that administrative remedy should be exhausted before resort to the courts. (Citations omitted). The claim against the union defendants for the breach of their duty of fair representation is a discreet claim quite apart

> from the right of individual employees expressly extended to them under the Railway Labor Act to pursue their employer before the Adjustment Board."

This court's rejection of the exclusive jurisdictional argument advanced in the *Czosek*, *Glover*, and *Conley* cases, is analogous and applicable to the lower court's dismissal in this case based upon their conclusion that exclusive jurisdiction over petitioners' subject unfair representation claim against IAM was within the exclusive jurisdiction of the National Mediation Board.

VII. CONCLUSION

On the basis of the arguments advanced herein, and the authorities cited in support thereof, petitioners, respectfully submit that the petition for writ of certiorari should be granted. Upon issuance of the writ, the decision of the Fifth Circuit Court of Appeals should be reversed and remanded with instructions to reverse the lower district court's dismissal of petitioners' complaint, and to send the proceeding back to the lower district court for further proceedings.

TOM CARTER,
Counsel for Petitioners
1726 Fulton National Bank Building
Atlanta, Georgia 30303
(404) 688-7026

CERTIFICATE

I, TOM CARTER, Counsel for Petitioners in this Court, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to the following persons:

Mr. J. R. Goldthwaite, Jr.
Adair, Goldthwaite, Stanford & Daniel
600 Rhodes Haverty Building
Atlanta, Georgia 30303
Attorney of record for Respondent in this Court, who was the Appellee in the Fifth Circuit Court of Appeals, and defendant in the Lower District Court.

This ..... day of October, 1975.

TOM CARTER,
Counsel for Petitioners

APPENDIX "A"

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF GEORGIA

Civil Action File No. C74-1780A

MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M. E. URRA, J. STEWART HARRISON, JOHN W. ROACH, JR. and CHARLES K. JOHNSON

VS

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

JUDGMENT

This action came on for consideration before the Court, Honorable Richard C. Freeman, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, GRANTING deft's Motion to Dismiss for lack of subject matter jurisdiction.

It is Ordered and Adjudged that the plaintiffs take nothing, that the action be dismissed, and that the defendant, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS recover of the plaintiffs, MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M. E. URRA, J. STEWART HARRISON, JOHN W. ROACH, JR. and CHARLES K. JOHNSON, their costs of action.

• • •

Dated at Atlanta, Georgia, this 4th day of February, 1975.

BEN H. CARTER
Clerk of Court
By: Mary E. Hall

Filed and entered in Clerk's Office February 4th, 1975
BEN H. CARTER, Clerk
By: Mary E. Hall
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Filed in clerk's office Feb. 4, 1975.
BEN H. CARTER, Clerk
By: Hary E. Hall, Deputy Clerk

C74-1780A

MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M. E. URRA, J. STEWARD HARRISON, JOHN W. ROACH, JR., and CHARLES K. JONHSON

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS

ORDER

Plaintiff airline mechanics bring this action against the defendant labor union under 28 U.S.C. § 1331 for violations of the Federal Railway Labor Act, 45 U.S.C. § 151, *et seq.* The plaintiffs allege that defendant International Association of Machinists and Aerospace Workers [IAM], in conjunction with plaintiffs' employer, Eastern Airlines, Inc. [Eastern], has wrongfully ignored plaintiffs' craft and unit status as a separate bargaining unit, consisting of only airline mechanics and specialists

and their helpers and apprentices, to the plaintiffs' detriment. The plaintiffs alleged damages of $15,000 to each plaintiff and ask for injunctive relief, attorneys' fees of $25,000 and exemplary damages of $1 million. The case is presently before the Court on defendant's motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted.

Specifically, the planitiffs allege injury by the defendant's actions in

> ". . . unilaterally unlawfully absorbing for all collective bargaining purposes plaintiffs' said certified craft and unit into one big communalized and heterogeneous class and uncertified bargaining unit of employees; including not only plaintiffs' said unit, but the separate bargaining unit of Eastern's stock (store) clerks, and the separate bargaining unit of Eastern's print shop employees, and the separate bargaining unit of Eastern's employees performing mostly cargo and baggage handling work and other various and sundry employees."

The plaintiffs show that the National Mediation Board [NMB] is the administrative agency empowered by statute to certify a craft or class of employees as an appropriate collective bargaining unit and to certify a duly selected labor organization as the exclusive collective bargaining representative of that craft. Plaintiffs' claim that their bargaining unit was determined and certfied by the NMB in a Board proceeding styled Case No. R-3639 to include the following: (1) airline mechanics, specialists, their helpers and apprentices previously certified by the Board in Case Nos. R-407 and R-576; (2) a "fringe group" of Eastern's employees who performed ground service and cleaning functions a preponderance of their

time; and (3) a "fringe group" of shop laborers and janitors added by the Board in Case No. R-1976.

Plaintiffs' claim the Board in Case No. 3639 expressly excluded from plaintiffs' bargaining unit the following groups of Eastern's employees: (1) cargo and baggage handlers, (2) stock (store) personnel, and (3) print shop employees.

It is the inclusion without Board certification of these latter three groups which plaintiffs allege put them in a minority position in their "own" union, and deprives them of a meaningful and effective voice and the right to organize and bargain collectively in their union and has caused them monetary damages and economic losses because they have lost the majority and lack a fair voice in bargaining with Eastern about wages, hours, terms and conditions of employment.

The defendant's first ground for dismissal in its motion is that this Court lacks subject matter jurisdiction to hear a dispute concerning representation of employee bargaining units subject to the Railway Labor Act—a matter vested in the exclusive jurisdiction of the National Mediation Board. *Switchmen's Union v. N.M.B.*, 320 U. S. 297 (1943); *Brotherhood of Railway and Steamship Clerks, etc. v. United Transportation Service, etc.*, 320 U.S. 715 (1943); *General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R. R. Co.*, 320 U. S. 323 (1943); *Rose, et al. v. Brotherhood of Railway and Steamship Clerks, etc.*, 181 F.2d 944 (4th Cir. 1950), *cert. den.*, 340 U.S. 851 (1950); *UNA Chapter, Flight Engineers' Int. Assoc. v. N.M.B.*, 294 F.2d 905 (D.C. Cir. 1961); *Brotherhood of Railway and Steamship Clerks, etc. v. N.M.B.*, 374 F.2d 269 (D.C. Cir. 1966); *Aeronautical Radio, Inc. v. N.M.B.*,

380 F.2d 624 (D.C. Cir. 1967), *cert. den.*, 289 U.S. 912 (1967); *Reynolds, et al. v. Int. Assoc. of Machinists*, etc., ... F. Supp. ....., 87 LRRM 2133 (MD N.C. 1973), *aff'd.*, 498 F.2d 1397 (4th Cir. 1974).

Section 2, Ninth of the Railway Labor Act. 45 U.S.C., §151-163, 181-188, provides:

> "If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days . . . the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of the Act. . . ."

It is clear from the case law that disputes concerning the representation of employees in bargaining units are exclusively within the jurisdiction of the National Mediation Board and therefore not reviewable by the courts. *Switchmen's Union v. N.M.B., supra*, and other cases cited above.

As the Court of Appeals stated in the *Rose* case, *supra*:

> "In the light of the decisions of the Supreme Court, there can be no doubt that the effect of this statute was to vest in the Mediation Board exclusive jurisdiction over the certification of bargaining. And it is equally clear that the exercise of discretion by the board with respect to such matters is not subject to review by the

courts. Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297, 64 S.Ct. 95, 88 L.Ed. 61; General Committee, etc. v. M-K-T R. Co., 320 U.S. 323, 64 S.Ct. 146, 88 L.Ed. 76; Brotherhood of Railway Clerks etc. v. United Transport Service Employees, 320 U.S. 715, 64 S.Ct. 260, 88 L.Ed. 420; Order of Railway Conductors of America, etc. v. Penn. R. Co., 323 U.S. 166, 65 S.Ct. 222, 89 L.Ed. 154; Steele v. L. & N. R. Co., 323 U.S. 192, 205 65 S.Ct. 226, 89 L.Ed. 173. And see Slocum v. D. L. & W. R. Co., 339 U.S. 239, 70 S.Ct. 577." 181 F.2d at 946.

The legislative history of Section 2, Ninth, of the Railway Labor Act bears out this construction of the Act, as the Court in *General Committee, etc. v. Missouri-Kansas-Texas R.R. Co., supra*, noted:

> "It is clear from the legislative history of §2, Ninth, that it was designed not only to help free the unions from the influence, coercion and control of the carriers but also to resolve a wide range of jurisdictional disputes between unions or between groups of employees . . . *However wide may be the range of jurisdictional disputes embraced within §2, Ninth, Congress did not select the courts to resolve them.* To the contrary, it fashioned an administrative remedy and left that group of disputes to the National Mediation Board. If the present dispute falls within §2, Ninth, the administrative remedy is exclusive." 14 LRRM at 632, 633 (footnotes omitted).

The gravamen of plaintiffs' claim is that they are being unfairly represented by the IAM because other crafts and classes of employees have been wrongfully included with them in a single bargaining unit. For this lack of fair representation, they seek monetary and exemplary dam-

ages. Plaintiffs allege that a federal question is presented by their claim of unfair representation under the Railway Labor Act, 45 U.S.C. § 151, *et seq. Steele v. Louisville & Nashville Railway Co.*, 323 U.S. 192 (1944); *Czosek v. O'Mara*, 397 U.S. 25 (1970); *Glover v. St. Louis-San Francisco Railway Co.*, 393 U.S. 323 (1969); *Thompson v. Sleeping Car Porters*, 316 F.2d 191 (4 Cir. 1963), and that the courts federal question jurisdiction is properly invoked under 28 U.S.C. § 1331.

This Court disagrees. Plaintiffs' claim of unfair representation is based *solely* on the ground that the NMB has "communalized" into one bargaining unit employees who rightfully should be part of another bargaining unit. This is the principal legal question the Court is called upon to decide, and, as noted above, it is precisely this question of "who represents whom" which is vested in the unreviewable discretion of the National Mediation Board.

The cases cited by plaintiffs where the Court assumed jurisdiction are inapposite to the instant case because they are distinguishable on their facts. The *Steele* case, *supra*, did not invoke the question of which crafts or classes should be included in a single bargaining unit. *Steele* concerned blatant racial discrimination by white firemen in the Brotherhood of Locomotive Firemen and Enginemen against negro firemen—members of the same "craft." The Court in the *Czosek* case, *supra*, allowed a suit by plaintiffs against their union for the union's "arbitary and capricious" refusal to process the claims of the plaintiffs who had been discharged after the merger of the Erie and Delaware, Lackawanna & Western Railroads. *Czosek* involved no claim of an improper grouping of employees by the NMB into a single bargaining unit. The *Clover v. St.*

Louis-San Francisco Railway case, *supra*, involved a claim by 13 employees, eight black and five white, against their railroad and union, for failure to promote them to the position of carmen allegedly in order to keep blacks out of that position. As in *Steele*, the cause of action concerned racial discrimination, not the misgrouping of distinct crafts into a single bargaining unit. The *Thompson* case, *supra*, allowed a claim of unfair representation against the union. But *Thompson* was grounded on alleged ingidious nonracial discrimination against the plaintiff and did not concern misgrouping of employees by the NMB, as in the instant case.

The plaintiffs argue that this controversy lies wholly outside the jurisdiction of the National Mediation Board and the NMB nas already expressly held so regarding this specific case. The plaintiffs applied to the NMB on February 28, 1974, to have this controversy decide by the Board. The defendant union and Eastern Airlines submitted their response. On July 15, 1974, the National Mediation Board rendered its decision in the proceeding designated "File C-4294." The Board denied that it had jurisdiction to adjudicate the controversy. The Board stated the following:

> "In reviewing your application for the Board's services, it does not appear that there is an allegation of the existence of a representation dispute as described in Section 2, Ninth of the Railway Labor Act. Additionally, there is no allegation that the certified representative and the Carrier are at a bargaining impasse concerning the matters contained in your application, and thus an invocation for the Board's mediatory services is not appropriate.
>
> "The National Mediation Board does not have jurisdiction to determine the manner in which a carrier and a union, certified for one or more crafts or classes, bargain, and thus the questions which you raise are not properly resolved by the National Mediation Board, but may be more effectively resolved by direct conferences between the affected parties.
>
> Since there is no jurisdictional basis for the processing of your application in its present context, that is, failure to allege and demonstrate the existence of a representation dispute, the application is dismissed."

The Board characterized this dispute as one concerning "the manner in which a carrier and a union, certified for one or more crafts or classes, bargin . . ." This Court does not characterize this case as involving a dispute between the union and carrier. This is a dispute between the union and its employees over the propriety of including various crafts and classes of employees in one bargaining unit. Such a determination lies within the exclusive jurisdiction of the National Mediation Board, as the Court has noted above. The failure of the National Mediation Board to characterize this case as the plaintiff urges, and as this Court holds, is a matter to be pressed upon the Board by the plaintiffs in subsequent proceedings. In any event, this Court is barried by statute and case law from determining who should be included in plaintiffs' bargaining unit. Therefore the Court lacks the jurisdiction to award a monetary judgment to plaintiffs on the basis of a proven wrongful grouping of employees, since such an award would have to be bottomed on a resolution of the underlying legal question which the Court lacks the subject matter jurisdiction to resolve.

Inasmuch as this issue is dispositive of the entire case

the Court declines to address itself to defendant's other ground for dismissal.

Accordingly, the Court ORDERS the defendant's motion to dismiss GRANTED for lack of subject matter jurisdiction.

SO ORDERED, this 4 day of February, 1975.

RICHARD C. FREEMAN
UNITED STATES
DISTRICT JUDGE

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75-1978
Summary Calendar*

MATHEW S. JASINSKI, ET AL.,
Plaintiffs-Appellants,

versus

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia

---

(July 29, 1975)

Before COLEMAN, AINSWORTH and SIMPSON, Circuit Judges.

PER CURIAM:

AFFIRMED. See Local Rule 21.[1]

---

* Rule 18, 5 Cir.; See *Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al.*, 5 Cir. 1970, 431 F.2d 409, Part I.

[1] See *NLRB v. Amalgamated Clothing Workers of America*, 5 Cir. 1970, 430 F.2d 966.

APPENDIX "C"

NATIONAL MEDIATION BOARD

Washington, D.C. 20572

July 15, 1974

File No. C-4294

Mr. Thomas Linton Carter, Jr.
Suite 1726
Fulton National Bank Building
55 Marietta Street, N. W.
Atlanta, GA 30303

Dear Mr. Carter:

This has reference to the exchange of correspondence generated by your letter of February 28, 1974, attaching an application to invoke the services of the National Mediation Board which you captioned as involving "Dispute-Violation of Eastern and IAM of the collective bargaining craft and unit of Eastern's airline mechanics and related employees; and deprivation of the statutory organizational and craft rights of Applicants and their fellow employees under the Railway Labor Act, as amended. The National Mediation Board has circulated your application to the Union and Carrier involved soliciting their comments.

Comments of the Carrier were received on March 18, 1974, and transmitted to you on April 5, 1974. The IAM, on April 12, 1974, indicated that it agreed with the Carrier's position in this matter and that the application should be dismissed for the same reasons expressed by the Carrier. Unfortunately, the letter of the IAM dated April 12, 1974, was not sent to you before this date (copy now enclosed).

In revewing your application for the Board's services,

it does not appear that there is an allegation of the existence of a representation dispute as described in Section 2, Ninth of the Railway Labor Act. Additionally, there is no allegation that the certified representative and the Carrier are at a bargaining impasse concerning the matters contained in your application, and thus an invocation for the Board's mediatory services is not appropriate.

The National Mediation Board does not have jurisdiction to determine the manner in which a carrier and a union, certified for one or more crafts or classes, bargain, and thus the questions which you raise are not properly resolved by the National Mediation Board, but may be more effectively resolved by direct conferences between the affected parties.

Since there is no jurisdictional basis for the processing of your application in its present context, that is, failure to allege and demonstrate the existence of a representation dispute, the application is dismissed.

Very truly yours,
Rowland K. Quinn, Jr.
Executive Secretary

cc-to: Mr. John P. Mead
Staff Vice President-Industrial Relations
Eastern Airlines, Inc.
Miami International Airport
Miami, FL 333148
Mr. Floyd E. Smith, Int'l President
International Association of Machinists
& Aerospace Workers, AFL-CIO
1300 Connecticut Avenue, N.W.
Washington, DC 20036

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-634

MATHEW S. JASINSKI, et al.,
Petitioners,

versus

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO THE PETITION FOR CERTIORARI

Plato E. Papps
1300 Connecticut
Avenue, N.W.
Washington, D.C.
20036

Of Counsel

J. R. Goldthwaite, Jr.
600 Rhodes-Haverty Bldg.
134 Peachtree Street
Atlanta, Georgia 30303

Counsel for Respondent

January 1976

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-634

MATHEW S. JASINSKI, et al.,
Petitioners,

versus

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO THE PETITION FOR CERTIORARI

Plato E. Papps
1300 Connecticut
Avenue, N.W.
Washington, D.C.
20036

Of Counsel

J. R. Goldthwaite, Jr.
600 Rhodes-Haverty Bldg.
134 Peachtree Street
Atlanta, Georgia 30303

Counsel for Respondent

January 1976

INDEX

INDEX TO BRIEF
APPENDIX

Index to Brief Appendix

AUTHORITIES CITED

Opinions

Opinions

Opinions

Statutes

Official Publications

Official Publications

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

NO. 75-634

MATHEW S. JASINSKI, et al.,
Petitioner,

versus

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
Respondent.

BRIEF IN RESPONSE TO
THE PETITION FOR CERTIORARI

OPINIONS BELOW

The per curiam affirmance of the District Court opinion by the United States Court of Appeals for the Fifth Circuit, issued July 29, 1975, is unpublished but is reported at 517 F.2d 478. The opinion of the United States District Court for the Northern District of Georgia, entered February 4, 1975, was not published in the West System but is unofficially reported at 90 LRRM 3021.

The Court of Appeals and District Court decisions are printed in the Appendix to the petition for certiorari at pages 31 and 22, respectively.

STATEMENT OF CASE

Plaintiffs (Petitioners) filed civil action for alleged individual damages in the District Court under the Railway Labor Act [45 U.S.C. §151, et seq.], alleging that the Machinists Union had violated the Act and its duty to fairly represent plaintiffs by including the craft or class of Airline mechanics and related employees of Eastern Airlines, of which plaintiffs are members, under the same collective bargaining agreement with other employees of Eastern who are members of other crafts and classes. Brief Appendix, infra, A61-A71.

Defendant (Respondent) filed motions to dismiss for want of jurisdiction and for failure to state a claim upon which relief may be granted. Brief Appendix, infra, A72.

The District Court granted the motion to dismiss for want of jurisdiction, saying:

> . . . This is a dispute between the union and its [represented] employees over the propriety of including various crafts and classes of employees in one bargaining unit. Such a determination lies within the exclusive jurisdiction of the National

> Mediation Board, as the Court has noted above. The failure of the National Mediation Board to characterize this case as the plaintiff urges, and as this Court holds, is a matter to be pressed upon the Board by the plaintiffs in subsequent proceedings. . . . (Appendix to the petition for certiorari, 29; explanatory bracket and emphasis supplied).

Thus, the District Court held that the power to determine what crafts and classes of employees are to be included in a unit appropriate for collective bargaining under the Railway Labor Act lies within the exclusive jurisdiction of the National Mediation Board; and that, if the National Mediation Board improperly refused to exercise its statutory jurisdiction in this case, such is a matter to be attacked directly, rather than collaterally as plaintiffs attempt to do in this proceeding.

The District Court therefore dismissed plaintiffs' action for want of jurisdiction and did not pass upon the union's motion to dismiss for failure to state a claim.

The Court of Appeals affirmed, per curiam, without a written opinion.

SUMMARY OF FACTS

The history of bargaining between Eastern Airlines and the Machinists Union is complex. That history is traced in NMB Case No. R-3639 (C-3355), decided December 5, 1963, 1/ and in Case Nos. R-3712, R-3713, R-3714, decided July 14, 1965, 2/ and in other materials contained in Brief Appendix, infra.

The Machinists Union has become the representative of several classifications of EAL employees, either through voluntary recognition or certification beginning December, 1937, and:

> Over the years since 1937, under IAM representation all of these employees gradually through successive negotiations have been included under a single collective bargaining agreement.
> (NMB Decision No. R-3639, December 5, 1963, 4 NMB Determinations, at 17).

In 1965, Aircraft Mechanics Fraternal Association sought separate representation

---

1/ Volume 4, Determination of Craft or Class of the National Mediation Board, page 14; decision reprinted in Brief Appendix, infra, at A1.

2/ Volume 4, Determination of Craft or Class of the National Mediation Board, page 54; decision reprinted in Brief Appendix, infra, at A13.

of mechanics and related employees. An imminently qualified disinterested committee, appointed by MNB pursuant to Section 2, Ninth of the Railway Labor Act, 3/ in Case Nos. R-3712, R-3713, R-3714, found that the separate representation requested by AMFA was inappropriate. 4 NMB Determination 54, July 14, 1965, at 66, et seq. That determination broadened the classifications of employees included within the craft or class of airline mechanics and related employees from the determination two years earlier in R-3639. AMFA declined to participate in an election in the broadened unit. Op. Cit; supra, at 66.

In March, 1974, Jasinski, et al., filed application with the National Mediation Board asking for a determination that EAL and Machinists were acting improperly by including all Machinists-represented employees under a single contract; but as the basis of their complaint, Jasinski, et al., requested NMB to revert to the craft or class of airline mechanics defined in R-3639. 4/ Thus, petitioners' claim in this case substantially reiterates the 1965 request of AMFA and requires a determination of craft or class as an essential element of the relief requested.

Upon request for comments by NMB, EAL responded that the appropriate unit

---

3/ 45 U.S.C. § 152, Ninth.

4/ Petitioners' application was docketed by NMB as No. C-4294 and is reprinted in Brief Appendix, infra, at A49.

had been defined in R-3712 and that the Complaint should be dismissed. 5/ IAM concurred in that opinion. 6/ Neither EAL nor IAM suggested that NMB was without jurisdiction to adjudicate Petitioners' Complaint.

The Executive Secretary of the National Mediation Board administratively dismissed Petitioners' application for want of jurisdiction in the NMB,

> . . . to determine the manner in which a carrier and a union, certified for one or more crafts or classes, bargain, and thus the questions which you raise are not properly resolved by the Mediation Board, but may be more effectively resolved by direct conferences between the affected parties. . . . (Brief Appendix, infra, at A59).

Rather than launch a direct challenge in the District of Columbia to the refusal of NMB to assert jurisdiction, petitioners elected to attack the NMB action collaterally by civil action for individual damages in the Northern District of Georgia.

5/ See letter of response, Brief Appendix, infra, at A55.

6/ Brief Appendix, infra, at A58. See also A57.

COMMENTS

1. The Courts Below Did Not Err

In Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297, 300, 301 (1943), this Court said:

> . . . The Act in §2, Fourth writes into law the 'right' of the 'majority of any craft or class of employees' to 'determine who shall be the representative of the craft or class for the purposes of this Act'. That 'right is protected by §2, Ninth which gives the Mediation Board the power to resolve controversies concerning it and as an incident thereto to determine what is the appropriate craft or class in which the election should be held. See Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F.2d 757; Brotherhood of Railroad Trainmen v. National Mediation Board, 135 F.2d 780. A review by the federal district courts of the Board's determination is not necessary to preserve or protect that 'right'. Congress for reasons of its own decided upon the method for the protection of the 'right' which it created. It selected the precise machinery and fashioned the tool which it deemed suited to that end. Whether the imposition of judicial review on top of the Mediation Board's administrative

determination would strengthen that protection is a considerable question. All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced. Tutun v. United States, 270 U.S. 568, 576-577. In such a case the specification of one remedy normally excludes another. See Arnson v. Murphy, 109 U.S. 238; Wilder Mfg. Co. v. Corn Products Refining Co., 236 U.S. 165, 174-175; United States v. Babcock, 250 U.S. 328, 331; Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 404.

The Court went on to rule that:

> . . . Under this Act Congress did not give the the Board discretion to take or withhold action, to grant or deny relief. It gave it no enforcement functions. It was to find the fact and then cease. Congress prescribed the command. Like the command in the Butte Ry. case it contained no exception. Here as in that case the intent seems plain -- the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law.
> (320 U.S., at 305).

That ruling has been adhered to and followed with uniformity. See, e.g., General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R.R. Co., 320 U.S. 323 (1943); Brotherhood of Railway and Steamship Clerks, etc. v. United Transportation Service, etc., 320 U.S. 715 (1943); Rose, et al. v. Brotherhood of Railway and Steamship Clerks, etc., 181 F.2d 944 (4th Cir. 1950), cert. den. 340 U.S. 851 (1950); UNA Chapter, Flight Engineers' Int. Assoc. v. N.M.B., 294 F.2d 905 (D.C. Cir. 1961); Brotherhood of Railway and Steamship Clerks, etc. v. N.M.B., 374 F.2d 269 (D.C. Cir. 1966); Aeronautical Radio, Inc. v. N.M.B., 380 F.2d 624 (D.C. Cir. 1967), cert. den. 289 U.S. 912 (1967); Reynolds, et al. v. Int. Assoc. of Machinists, etc., 87 LRRM 2133 (M.D. N.C. 1973), aff'd. per curiam in an unpublished decision, 498 F.2d 1397 (4th Cir. 1974). 7/

One of the principal determinants which NMB has always considered in defining an appropriate craft or class is the history of bargaining between the carrier and unions with respect to the affected employees. In other words, when it is asked to consider what employees shall be included in a craft or class, NMB looks to what classifications of employees the parties themselves have regarded to be

---

7/ Copy of the District Court and Court of Appeals decisions in the Reynolds case are contained in the Appendix to this Brief, infra, at A32 and A39, respectively.

cohesive, interrrelated classifications of employees with a community of interest appropriate for inclusion under a single collective bargaining agreement. If the grouping of employees under a single agreement has resulted in a history of successful bargaining over a period of years, great weight is given to that history in determining the appropriate class or craft.

For example, in Case No. R-1851, 8/ which was very similar on its facts to the present issue, the Board said:

> The reasons advanced by the MMP for now desiring a segregation of the craft or class are: first, the licensed personnel are men in charge of the vessel and as such their conditions of employment are separate and distinct from the unlicensed personnel; secondly, that by reason of the larger number of unlicensed men employed, this latter group can always out-vote the licensed officers in an election.
>
> It is clear that the first reason constitutes a reversal of the position taken by MMP in R-337 where it contended that 'the unlicensed deck hands were in training for the licensed positions of

---

8/ In the matter of Employees of Erie Railroad Company, Case No. R-1851, 1 Determination of Craft or Class of NMB 488.

masters, mates or pilots and, therefore, were part of the same craft.' Even assuming, however, that the facts tend to support this argument, it certainly cannot be said that it is entitled to any greater weight than the argument advanced more than ten years ago. In reaching a determination, therefore, as to which of the two diametrically opposed views will tend to promote industrial peace resort must be had to the history of collective bargaining on the property. When this is done, it becomes abundantly clear that the findings set forth above support a conclusion that the composite craft or class produced a minimum of friction.

The second reason assigned for a change in the craft or class finds its basis solely on a desire on the part of the licensed personnel to bargain separately from the unlicensed personnel. It is true that the desires of the employees are always an important consideration in fixing craft or class lines. In this instance, however, that factor is outweighed by the record of successful bargaining by the larger craft over a period of years. (1 NMB Determinations, at 491).

Similar weight was given to historical bargaining considerations in Cases Nos. R-3639 (C-3355) and R-3712. 9/

The impartial committee in R-3712 said:

> This policy of primary reliance on 'the customary groupings of the employees into crafts and classes as it has been established by accepted practice over a period of years. . . .' has remained the policy of the Board since its establishment. (4 NMB Determinations, at 60).

Thus, the NMB, having exclusive authority so to determine, considers the grouping practices historically utilized by the carrier and the union when it defines classes and crafts of employees which are appropriate for bargaining.

Underlying petitioners' claim in the District Court is the threshold contention that IAM and EAL are bargaining with respect to an inappropriate unit (craft or class) of employees; but there are three extant and possible definitions of what employees should be included in the craft or class of which petitioners are members.

9/ 4 NMB Determinations 14, 16-22, Brief Appendix, infra, A3-9, and 4 NMB Determinations 54, 60-66, Brief Appendix, infra, A19-A25.

1. The craft or class of airline mechanics and related employees defined in 1963 in Case No. R-3639;

2. The enlarged craft or class of airline mechanics and related employees defined in 1965 in Case No. R-3712;

3. The still larger group of employee classifications which have historically been grouped under one contract by EAL and IAM since 1937. 10/

Only the Mediation Board may determine which of these definitions, or some other, is the appropriate one.

Thus, assuming without conceding that a district court can entertain a claim that IAM is guilty of an "unfair labor practice" 11/ for including several certified crafts or classes under one contract, a court could not do so until the Mediation Board has adjudged that such combination of employee classifications has not, by virtue of the long and

---

10/ See discussion in Case No. R-3712, 4 NMB Determinations, at 57, 58, Brief Appendix, infra, A16, A17.

11/ The Railway Labor Act does not define any union unfair practices comparable to those contained in Section 8(b) of the National Labor Relations Act, as amended [29 U.S.C. 158(b)].

successful history of bargaining for such combined group, become an appropriate class or craft.

The recent case of Reynolds, et al. v. International Association of Machinists and Aerospace Workers, et al., 87 LRRM 2133 (M.D. N.C., CA #C-179-WS-73, Nov. 8, 1973), aff'd per curiam in an unpublished decision, 498 F.2d 1397 (4th Cir. 1974) was very similar to the instant case. 12/ There a group of building maintenance employees contended that they were members of a craft or class of employees certified by NMB but had been wrongfully excluded from the coverage of the collective bargaining agreement subsequently agreed between Piedmont Airlines and the Machinists Union. The plaintiffs sued the union for unfair representation by failing to include them under the contract. The District Court said:

> 3. If plaintiffs are members of the craft or class of 'Airline Mechanics and Related Employees' of Piedmont Airlines, defendants are bound by statute to represent them. However, if plaintiffs are not members of that craft or class, defendants owe them no duty of representation.
>
> 4. The primary issue presented by the complaint is whether

12/ Decisions reprinted in Appellee's Brief Appendix, infra, A32 and A39.

> plaintiffs are members of the craft or class of 'Airline Mechanics and Related Employees' of Piedmont Airlines.
>
> * * *
>
> 6. The primary issue presented by the complaint is within the exclusive jurisdiction of the National Mediation Board and this Court, therefore, is without jurisdiction to entertain the complaint.

Upon appeal in the Reynolds case, the Fourth Circuit affirmed, saying:

> Per Curiam: After oral argument we affirm on the opinion of the district court. Plaintiffs have the right, under 45 USC §152, Ninth, to obtain a decision from the National Mediation Board as to whether they are included within the bargaining unit for which an employment contract has been negotiated. (Brief Appendix, infra, at A39, A40). 13/

2. Petitioners State No Claim Upon Which Relief May Be Granted.

This Court has consistently recognized that, through passage of the Railway

---

13/ Cf. Leedom v. Kyne, 358 U.S. 184 (1958).

Labor Act, Congress sought a regulatory scheme which would effectively stabilize labor relations in the industry. The success of the scheme depended on an effective system of collective bargaining and mediation by representatives of the parties in dispute. A necessary adjunct to the scheme involved strengthening union status in relation to both carriers and employees. See Int. Assoc. of Machinists etc. v. Street, 367 U.S. 740, 759, 760 (1961). Congress saw fit to clothe the bargaining representative with "powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents." Steele v. Louisville & Nashville R. Co., 323 U.S. 192, 202 (1944).

Pursuant to that authority, IAM and Eastern have historically included all EAL employees represented by IAM under a single collective bargaining agreement. The NMB gives great weight to the success of such bargaining in defining appropriate crafts and classes, thus recognizing a discretion vested in unions as bargaining representatives.

Aside from the factual issue concerning what may be the appropriate craft or class of employees which includes petitioners, discussed ante, IAM clearly has the discretion, absent bad faith, discrimination, or other invidious motivations, to include all groups of EAL employees represented by it under one contract. Cf., Ford Motor Co. v. Huffman, 345 U.S. 330 (1952); Humphrey v. Moore, 375 U.S. 335 (1964); Vaca v. Sipes, 386 U.S. 171 (1967);

Amal. Asso. of Street Electric Ry. and Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971).

If not, the history of bargaining criterion traditionally utilized by NMB (and NLRB) is irrelevant and erroneous.

It is not necessary here, therefore, to decide whether NMB has authority to issue craft or class determinations without request for an election.

Petitioners alleged only a factual diminution of voting strength as the basis of their claim for relief. They set forth no factual allegations which give rise to a litigible issue of bad faith or invidious motivation on the part of IAM in negotiating the single agreement with EAL. Cf., Balowski v. Int. Union, UAW, 372 F.2d, 829, 835 (6th Cir. 1967); Gainey v. Bro. of Ry. Employees, 313 F.2d 318 (3rd Cir. 1960). "Mere unsupported conclusions of fact or mixed fact and law are not admitted by a motion to dismiss". Hess v. Petrillo, 259 F.2d 735 (9th Cir. 1958). Cf., Homan Mfg. Co. v. Russo, 233 F.2d 547 (7th Cir. 1956). "Conclusory words. . . without a concomitant showing of lack of good faith do not set forth a claim". Hardcastle v. Western Greyhound Lines, 303 F.2d 182, 196 (9th Cir. 1962).

Allegation of loss of individual voting strength by virtue of absorption into a larger unit of employees does not, without more, suffice to show actionable breach of duty. Long v. Ga. Kraft Co., 238 F.Supp. 605 (N.D. Ga. 1971), aff'd

455 F.2d 331 (5th Cir. 1972); Strong v. Sheet Metal Workers, etc., 75 LC ¶10, 313 (N.D. Calif. 1974), [decision printed in Brief Appendix, infra, at A41].

By refusing to assert jurisdiction in this case, the Board held that the carrier and the union have the discretion to include all units of employees for which the union is the representative under a single contract. 14/ Absent a showing of discriminatory or invidious motivation, the union has that discretion under the law.

We return to the words of this Court in Switchmen's Union v. NMB, with regard to determinations of craft or class by NMB:

> . . . A review by the federal district courts of the Board's determination is not necessary to preserve or protect that 'right'. . . . (320 U.S. at 301).

14/ Union representation of more than one craft or class of employees is not prohibited. Brotherhood of Railway and Steamship Clerks, etc. v. Virginian Ry. Co., 125 F.2d 853 (4th Cir. 1942); Air-Line Stewards and Stewardesses Asso. v. N.M.B., 294 F.2d 910 (D.C. Cir. 1961); Order of Ry. Conductors v. N.M.B., 141 F.2d 366 (D.C. Cir. 1944).

CONCLUSION

For the reasons discussed, the petition for certiorari should be denied.

Respectfully submitted,

By: J. R. Goldthwaite Jr.
J. R. GOLDTHWAITE, JR.

600 Rhodes-Haverty Bldg.
134 Peachtree Street
Atlanta, Georgia 30303

Counsel for Respondent

Plato E. Papps
1300 Connecticut Avenue, N.W.
Washington, D. C. 20036

Of Counsel

APPELLEE'S BRIEF APPENDIX

In the Matter of REPRESENTATION OF EMPLOYEES OF EASTERN AIR LINES, INC., (1) MECHANICS AND RELATED EMPLOYEES (2) STOCK CLERKS (3) PRINT SHOP EMPLOYEES

Case No. R-3639 (C-3355)—Decided December 5, 1963

FINDINGS UPON INVESTIGATION

On April 16, 1963, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (IBT), filed an application with the National Mediation Board pursuant to Section 2, Ninth, of the Railway Labor Act, alleging the existence of a representation dispute involving employees of Eastern Air Lines, Inc., (EAL), performing duties of (1) Mechanics and Related Employees, (2) Stock Clerks, and (3) Print Shop Employees. At the time the application was filed these employees were represented for the purposes of the Railway Labor Act by the International Association of Machinists, (IAM).

During preliminary investigation of this application, issues were raised which the Board found required a recorded hearing. Accordingly, a public hearing was held on July 1 and 2, 1963, at which all concerned were provided an opportunity to submit testimony and documentary evidence in support of their respective contentions.

Both of the labor organizations party to the dispute and the carrier submitted briefs which, following an extension of time, were due on August 5, 1963.

POSITION OF THE PARTIES

The applicant organization, the IBT, contends that the following employees of Eastern Air Lines constitute separate crafts or classes for purposes of representation under the Railway Labor Act, as amended.

a. Mechanics and Related Employees
b. Stock Clerks
c. Print Shop Employees

a. As to the employees designated as Mechanics and related Employees, the IBT contends this group embraces the following classifications:

Inspectors
Lead Mechanics (Line or Shop)
Apprentice
Lead Cleaner
Cleaners
Lead Shop Laborers

Shop Laborers
Shop Janitresses
Lead Ground Communication and Flight Simulator Technician
Ground Communications and Flight Simulator Technician

In addition, the IBT contends that the alleged craft or class of "Mechanics and Related Employees" should include ramp service employees who perform the following duties on a preponderance of work basis:

> the fueling, oiling and ADI servicing of airplanes, not including the changing and/or adding of engine oil in conjunction with maintenance interphase or phase checks, oil tanks or engine changes.

For ready reference, the employees referred to above may be designated as Fuelers. Such Fuelers are classified by the carrier as Ramp Service Employees, which is a group totaling 1,630. Although there are some 637 Ramp Service Employees qualified to work as Fuelers, the IBT contends for only 180 of this number on the grounds that they work a preponderance of time in that capacity.

The IBT does not contend for representation of the balance of employees classified as Ramp Service Employees.

The position of IAM is described on Page 4 of their brief as follows:

> No question arose at the hearing concerning the propriety of the Teamsters' desired placement of EAL employees in jobs covered by the EAL–IAM agreement titled Inspector, Lead Mechanic, Mechanic, Apprentice, Helper, Lead Ground Communication and Flight Simulator Technician, Ground Communication and Flight Simulator Technician, those Cleaners, Shop Laborers, Janitresses and their Leads assigned to clean shops, hangers or ramps and those Ramp Service Employees and Leads driving and operating fuel trucks and related equipment utilized for fueling, oiling and ADI servicing of aircraft within the Airline Mechanic Craft or Class for voting and certification purposes.
>
> However, conflict arose over the Teamsters' desired exclusions from the Airline Mechanics Craft or Class and the Clerical, Office, Stores, Fleet and Passenger Service Employees Craft or Class, as those crafts or classes have been determined in Cases No. R-1447 (American Airlines), R-1706 (National Airlines) and R-2783 (Northwest Airlines).

b. As to the group of Stock Clerks, the IBT observes that industry practice and numerous NMB certifications for separate representation of Stock Clerks support their position to treat such employees as a separate craft or class.

The IAM contests proposed grouping of Stock Clerks as a separate bargaining unit and points to the fact that the Board, in Case R–1706, determined such employees to be a part of the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees.

c. The IBT contends that the group designated as Print Shop Employees, including Lead Pressman, Pressman, Assistant Pressman, Lead Bindery Clerk, Bindery Clerk, may be appropriately

considered as a separate craft or class for representation purposes.

Here again the IAM opposes the applicant's position and argues that the IBT seeks the establishment of a new craft or class.

Eastern Air Lines, that carrier here involved, contends for a grouping of employees contrary to either of the contesting unions. It should be observed that under the Railway Labor Act, a carrier is not a party in representation disputes. However, in the Board's investigation of such matters under Section 2, Ninth, of the Act, it must rely on the carrier for information needed in considering the dispute. Accordingly, the views of the carrier on matters of this nature have been received and taken into account.

It is the position of EAL that all three of the groups contended for by the IBT should be combined into one unit for representation purposes. The position of EAL is based on the collective bargaining history of these employees on this property and the alleged interrelation of the work of these employees on Eastern.

The IBT reviews extensively the representation of similar employees on other airlines and the Board's past determination of craft or class in support of its contentions in this case.

The IAM does not take an affirmative position on how the employees should be grouped for purposes of representation but contents itself with the negative position of opposition on the basis of past findings of the Board to the groupings proposed by the IBT. Their position, simply stated, is that the IBT petition should in all particulars be dismissed.

COLLECTIVE BARGAINING HISTORY

The collective bargaining history of the various groups of employees involved in this dispute extends back over a period of 25 years. On December 18, 1937, Case No. R–407, the Board certified the IAM to represent the craft or class of Airline Mechanics on Eastern. At that time there were 221 such employees. On November 3, 1939, Case R–576, a second certification was issued for Airline Mechanics, Specialists, their helpers and apprentices. Including the Specialists, the craft or class had grown by that time to 347 employees.

On May 10, 1946, Case R–1617, a certification was issued in favor of the IAM to represent Cargo Handlers in addition to Stock Clerks and Commissary Clerks, which during the interim had gained IAM representation by voluntary recognition; the Stock Clerks on December 30, 1939, and Commissary Clerks on June 1, 1944. At the time of the certification in R–1617, the Stock Clerks and Commissary Clerks were covered by a separate labor agreement between IAM and the carrier.

In the certification issued in R–1617, the Board called particular attention to the fact that it had made an interim finding in Case R–1471, issued October 4, 1945, regarding representation

of various employees of Trans Continental & Western Airlines, Inc. (now known as Trans World Airlines), in which Stock Clerks, Commissary Clerks and Cargo Handlers were voted as a single unit, although possibly part of a larger craft or class of Clerical, Office, Station and Storehouse Employees, not then in dispute. The Board followed the precedent set in R–1471 in its certification issued in R–1617, by adding the Cargo Handlers, through a card check, to the Stores and Commissary personnel already represented on Eastern by IAM through recognition. The certification in R–1617 stated specifically that - "This certification does not establish a precedent or preclude an ultimate determination in any future dispute as to the proper classification of Cargo Handlers for representation purposes."

On February 11, 1948, a certification was issued, Case R–1976, to IAM to represent Airline Mechanics (including Shop Laborers and Janitors). This certification covered some 45 Shop Laborers and Janitors and was an addendum to the certification in R–576, issued on November 3, 1939, the basic certification in behalf of IAM for Mechanics.

The purpose of the certification in R–1976 was to round out the craft or class of Airline Mechanics on Eastern by adding the Shop Laborers and Janitors working in and around shops and hangers, to make it conform with the craft or class of Airline Mechanics which the Board had found to be the appropriate grouping in its Findings issued in case R–1447, decided October 1, 1945, on American Airlines. Case R–1447, has been generally regarded as the controlling decision defining the Mechanics' craft or class.

On February 24, 1950, in Case R–2247 a certification was issued for IAM to represent Print Shop Employees.

Over the years since 1937, under IAM representation all of these employees gradually through successive negotiations have been included under a single collective bargaining agreement. Where, in 1937 the IAM bargaining group totalled 221, this group increased to a total of 5,889 as of May 17, 1963. This number is subdived by groups involved in this case as follows:

Mechanics, Cleaners, Laborers and Simulator Technicians	3,940
Stock Clerks	306
Ramp Service Men	1,630
Pressmen and Bindery Clerks	13
Total	5,889

Section 2, Fourth, of the Railway Labor Act, gives employees subject to its provisions "the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the the representative of the craft or class for the purposes of this Act."

Section 2, Ninth, requires the National Mediation Board to investigate disputes which arise among a carrier's employees over representation, and to certify the duly authorized representatives of such employees. In determining the choice of the majority of employees under this section, the Board is required to designate who may participate as eligible voters in the event election is required.

The craft or class of Airline Mechanics is well defined, having been determined during 1945 as a result of Board's investigations of representation disputes on a number of airlines. The principal findings on this question were issued in Case R–1447. October 1, 1945, involving employees of American Airlines. Findings applicable to other airlines were also issued by the Board during October 1945 and dealt with similar problems of craft or class. As thus determined and reviewed in Case R–1706 on January 31, 1947, the craft or class includes:

A. Mechanics who perform maintenance work on aircraft, engine, radio or accessory equipment.

B. Ground service personnel who perform work generally described as follows: Washing and cleaning airplane, engine, and accessory parts in overhaul shops, fueling of aircraft and ground equipment; maintenance of ground and ramp equipment; maintenance of buildings, hangars, and related equipment; cleaning and maintaining the interior and exterior of aircraft; servicing and control of cabin service equipment; air conditioning of aircraft; cleaning of airport hangars, buildings, hangar and ramp equipment.

C. Plant Maintenance personnel—including employees who perform work consisting of repairs, alterations, additions to and maintenance of buildings, hangars, and the repair, maintenance and operation of related equipment including automatic equipment.

In the years since 1945 this craft or class findings for Airline Mechanics has not been seriously challenged. On the contrary, throughout the industry this grouping of employees constitutes the prevailing pattern for representation in collective bargaining relationships between carriers and unions.

The main differences as to personnel included in this craft or class, and the positions involved in the present dispute center around Ground Service personnel in the determinations referred to above and personnel in this case designated as Ramp Service employees.

The work of Ramp Service employees on EAL is defined in the current labor agreement between the carrier and IAM:

(J) RAMP–SERVICE: The work of Ramp-Service employees shall consist of non-mechanical duties in connection with the operation and servicing of aircraft while on the ground. These duties shall be the loading, unloading, packing and securing cargo in planes, in accordance with Company procedure; the handling of cargo between hangars, shops, mail, air freight and express rooms or trucks, baggage rooms and field ticket offices; the handling of loading steps, ground power units, baggage carts, landing gear safety pins, wheel chocks and other ground handling equipment, fire extinguishing equipment, fuel trucks and equipment, air conditioners, cargo truck, and the fueling, oiling and ADI servicing of airplanes, not including the changing and/or adding of engine oil in conjunction with maintenance interphase or phase checks, oil tank or engine changes.

Employees in this classification may be used to clean airplanes and perform other non-mechanical duties in connection with the preparation of aircraft for flight. However, at no time will this become a permanent full time assignment.

At the outset in considering differences between the parties here involved as to occupations included in the established craft or class of Airline Mechanics, it should be noted that the terms "Fleet Service," "Ramp Service," and "Ground Service" employees are not precisely meaningful designations. What are referred to as Fleet Service employees on one airline may be called Ground Service employees on another. On Eastern Air Lines the Ground Service functions included in the craft or class of Airline Mechanics are performed by so-called Ramp Service or Fleet Service employees.

The current agreement between Eastern Air Lines and IAM lists the various employee groups represented by IAM in Article 4 - Classifications of Employees; as follows:

Mechanical Employees
- A. Inspectors
- B. Lead Mechanics
- C. Mechanics
- D. Apprentice
- E. Helper

Fleet Service Employees
- I. Lead Ramp-Service Man
- J. Ramp Service Employees
- K. Lead Cleaner
- L. Cleaners

Shop Laborers and Shop Janitresses
- M. Lead Shop Laborer
- N. Shop Laborers
- O. Shop Janitresses
- T. Lead Ground Communications and Flight Simulator Technician
- U. Ground Communications and Flight Simulator Technicians

The description of the work of Ramp Servicemen shown above includes the duties of loading, unloading, packing and securing cargo in planes in accordance with company procedure; the handling of cargo between hangers, shops, mail and express rooms or trucks, baggage rooms and field ticket offices; handling loading steps, baggage carts and cargo trucks.

Such work is generally recognized as that of "cargo handlers." who are included in the craft or class (Case R-1706 et. al.) of Clerical, Office, Stores, Fleet and Passenger Service Employees, as personnel who "load and unload baggage and cargo."

The other duties assigned to Ramp Service Employees and defined above in the IAM agreement consist of "non-mechanical

duties in connection with the operation and servicing of aircraft on the ground."

Such work has been found by the Board in its determinations in Cases R–1447 and R–1706, quoted above, as being "Ground Service" work, non-mechanical in nature but a part of the work performed by airline employees in the generally recognized craft or class of "Airline Mechanics."

On EAL the following twelve functions all of which fall naturally in the work classified as "Ground Service," may be performed either by Ramp Service employees or Mechanics depending on circumstances.[1]

Glycoling
Placing and Removing Chocks
Sumping Tanks
Placing and Removing Gear Pins
Cleaning Windshields
Fueling Aircraft Engines with Oil
Cleaning Ramps
Fire Watch when Starting Engines
Cockpit Signalling when Starting Engines and Moving Aircraft
Attaching and Removing of Power Pull
Fueling Ground Equipment
Preventive Maintenance on Motorized Ground Equipment (Changing Oil, Checking Water, etc.)

The application of the IBT for an election among the craft or class of "Mechanics and Related Employees" runs counter to the well established craft or class of Airline Mechanics as determined by the Board's findings in Case R–1447. Although the IBT includes most of the generally recognized classifications in the craft or class applied for, it excludes all Ramp Service employees except so-called Fuelers. There is no separate job title of Fueler on EAL. Such workers are classified as Ramp Service employees. The IBT contends for some 180 employees who perform fueling functions a preponderance of their time. The record shows there are some 637 [2] employees qualified to perform the fueling function and who may do such work on a given day and may also alternately, do other ramp service work such as handling the battery carts, control blocks, landing gear safety pins, wheel chocks, or fire extinguishing equipment. The record, however, is barren of any information on how much of the time of these 637 is spent in the fueling function, or in other types of ground service functions just mentioned.

The IBT has not advanced any persuasive reasons why the particular group of 180 Ramp Service employees (fuelers) should

[1] Board Exhibit No. 4.
[2] Board Exhibit No. 20.

be separated from other Ramp Service employees in considering those eligible to vote in the craft or class of Airline Mechanics, and leave out all others performing ground service functions.

Cleaning and janitorial service in and around shops, hangars, and ramp areas has long been considered as work included within the craft or class of Airline Mechanics, and this is recognized by IBT in the listing of classifications covered by their application.

On the basis of the entire record before it, the Board finds no reason to depart from the well established craft or class of "Airline Mechanics." The Board finds further, on the basis of investigation heretofore conducted, that a representation dispute exists among the craft or class of Airline Mechanics of Eastern Air Lines, and that such dispute should be resolved by a ballot box election using a list of eligible voters including employees in that craft or class as heretofore determined in Cases R–1447 and R–1706 et al, and as reviewed herein. The list of eligible voters shall include all Fleet Service Employees who perform ground service and cleaning functions a preponderance of their time, and shall exclude Fleet Service employees performing preponderantly as cargo handlers, as above described. Such employees are a part of another craft or class, not here in dispute.

The record before the Board indicates that EAL no longer has employees known as Commissary Clerks, for whom IAM was recognized as representative by EAL in 1944.

The second group of employees which the IBT seeks to vote separately are Stock Clerks. They argue that the community of interest, duties, functions, and nature of the work of Stock and Stores employees differ sufficiently from that of Mechanics on the one hand and Office, Clerical and Passenger Service employees, on the other as to support their position that Stock Clerks should be recognized and designated as a separate craft or class.

The IAM reviewed previous determinations respecting Stock Clerks and affirmed its long standing opposition to the inclusion of Stock Clerks in the Clerical and Office craft or class. By their own statements on the record before Emergency Board 122, Stock Clerks on EAL are a separate craft or class.

In 1945, Case R–1447, and in 1947, Case R–1706, Stock Clerks were determined to be a part of the Clerical and Office craft or class. This was in recognition of the clerical aspects of the job and also the fact that the duties of Stock Clerks are not mechanical in nature. At that time there was considerable diversity on the various airlines in the manner by which Stock Clerks were grouped for collective bargaining. In the years since those Determinations, this diversity has continued. Moreover, in most cases this trend is contrary to the early determinations. At the present time there is considerable variance in the Stock Clerks collective bargaining pattern. While on some lines they are included with the clerical craft or class, on many more they are

either a separate group or bargain together with the Mechanics. On EAL, the IAM was voluntarily recognized to represent Stock Clerks by a separate action on December 30, 1939.

In the vast majority of representation elections for Stock and Stores personnel conducted by the National Mediation Board they have been voted as a separate group.[4] In view of the lack of consistent pattern in the collective bargaining relationships for Stock Clerks, it would appear that there is no strong basis to disturb a separate grouping for these employees in this case. Accordingly, a representation election will be conducted among Stock Clerks.

The third group contended for by the IBT, designated as Print Shop Employees, is a group of approximately 13 in number. This group has been represented by the IAM since 1950 under a certification based on a check of authorizations. This is a procedure sometimes used by the Board in determining the desires of employees for representation in situations where employees secure representation for the first time and there is no contesting organization.

According to information supplied by the carrier these are not Print Shop employees in the general commercial sense but instead they operate the usual kind of duplicating machines used in large offices. None of the employees in this group was trained in the printers' craft but instead they were transferred or promoted to the Print Shop from other jobs on the airline such as Cleaners and Mail Room. Job titles in the Print Shop include Pressmen and Bindery Clerks of various grades. The job content of these employees and their occupational titles suggest they might reasonably be considered a part of the Clerical and Office craft or class. However, no contest for representation of that craft or class is at issue here. Accordingly, it appears that Print Shop employees should be considered for a separate group for purposes of a representation election which is hereby authorized as was done in 1950 (R–2247) when these employees first secured representation by the IAM.

CONCLUSION

On the basis of the entire record the Board concludes that File C–3355 is hereby docketed as Case No. R–3639 for formal investigation under the provisions of Section 2, Ninth, of the Railway Labor Act. In such investigation the groupings of employees for determining representation should be in accordance with the findings discussed herein and summarized under the following headings:

1. Airline Mechanics
2. Stock Clerks
3. Print Shop Employees

---

[4] IBT Exhibit No. 7.

A mediator will be assigned to continue investigation of this case in accordance with the findings and determinations set forth herein.

NATIONAL MEDIATION BOARD
WASHINGTON

MAR 30 1964 IPD

In the Matter of	
REPRESENTATION OF EMPLOYEES	CASE NO. R-3639
of	CERTIFICATION
EASTERN AIR LINES, INC.	April 15, 1964
(1) Airline Mechanics (2) Stock Clerks (3) Print Shop Employees	49 Eastern

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, Airline Division, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the crafts or classes of (1) Airline Mechanics (2) Stock Clerks, and (3) Print Shop Employees, employees of Eastern Air Lines, Inc.

At the time of application these employees were represented by the International Association of Machinists, AFL-CIO.

The case was assigned to Mediator William H. Pierce, and subsequently to Mediator Warren S. Lane for investigation.

FINDINGS

During the course of the investigation issues were raised as to who should participate in this dispute. A public hearing was held on the questions raised by those issues and, on December 5, 1963, findings upon investigation were issued by the Board outlining the grouping of employees for determining of representation in this case.

March 11, 1964, the International Brotherhood of Teamsters amended their application to exclude the craft or class of Airline Mechanics. A secret ballot election was conducted in the remaining crafts or classes.

April 6, 1964, prior to the count of ballots in this case the International Brotherhood of Teamsters withdrew its application to investigate a representation dispute among Print Shop Employees.

Following is the result of the election among Stock Clerks as reported by the mediator and attested by representatives of the contesting organizations who acted as observers.

Number of Employees voting:

	International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America	International Association of Machinists	Other	Number of Employees Eligible
Stock Clerks	49	264	1	340

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board had jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION

Therefore, the National Mediation Board certifies that the International Association of Machinists, AFL-CIO has been duly designated and authorized to continue to represent, for the purposes of the Railway Labor Act, the craft or class of Stock Clerks, employees of Eastern Air Lines, Inc.

By order of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

In the Matter of the Application of: AIRCRAFT MECHANCIS FRATERNAL ASSOCIATION, ALLEGING REPRESENTATION DISPUTES PURSUANT TO SECTION 2, NINTH OF THE RAILWAY LABOR ACT, INVOLVING EMPLOYEES OF EASTERN AIR LINES, INC., AND UNITED AIR LINES, INC., AND SEABOARD WORLD AIRLINES, INC., BY A COMMITTEE APPOINTED BY THE NATIONAL MEDIATION BOARD

Case Nos. R-3712 R-3713 R-3714—Decided July 14, 1965

On July 13, 1964 the Aircraft Mechanics Fraternal Association, pursuant to Section 2, Ninth of the Railway Labor Act, filed a request for an investigation of a representation dispute involving the following classifications of employees on Eastern Air Lines, Inc. which the AMFA maintains should constitute one craft or class it terms "Aircraft Mechanics:"

The craft or class of Aircraft Mechanics and Radio Electric Mechanics (Aircraft), including Inspectors, Lead Mechanics (Line and Shops), Mechanics (Line and Shops), Apprentice Mechanics, Lead Flight Simulator and Flight Simulator Employees.)

This case was docketed as R-3712.

On September 22, 1964 the AMFA filed request for an investigation of a representation dispute involving the following classification of employees on United Air Lines, Inc.:

The craft or class of Aircraft Mechanics (includes Lead Mechanic, Aircraft Inspector Lead Flight Simulator Technician, Flight Simulator Technician, Shop Inspector, Mechanic, Apprentice Mechanic) Radio and Electric Mechanic (Aircraft).

This case docketed as R-3713.

Subsequently, the AMFA made a similar application, docketed as case No. R-3714, with respect to the following employees of Seaboard World Airlines, Inc.:

The craft or class of Aircraft Mechanics (includes Lead Mechanics, Mechanics, Senior Mechanics, Inspectors, Mechanic Helpers, Radio and Electric Mechanics—Line and Shop).

In its post-hearing brief the AMFA finally stated that:

The employees who belong in the craft or class which AMFA seeks to represent are those . . . who "are trained to and possessed of sufficient skill to do and who in fact do mechanical work on the aircraft and its components and who are personally and directly responsible for the airworthy condition of the aircraft and its components."

The employees in the classification claimed by the AMFA employed on Eastern Air Lines and United Air Lines presently are

represented by the International Association of Machinists and on Seaboard World Airlines by the Transport Workers Union of America. They are part of the present craft or class of "Airline Mechanics and Related Employees" first established in Case No. R–1447 (American Airlines) decided October 1, 1945.

In its preliminary investigation of these applications the Board found that "The Aircraft Mechanics Fraternal Association contends that the craft or class grouping as presently established in the airline industry by the Board's decision in Case No. R–1447, issued October 1945, is inappropriate;" and that "the incumbent organizations, on the other hand, contend that the employees covered by these applications constitute only a part of the craft or class of airline mechanic as determined by the National Mediation Board in Case No. R–1447 which remains appropriate."

On November 4, 1964 the National Mediation Board issued an order pursuant to Section 2, Ninth of the Railway Labor Act which provides:

> Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers and to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

Pursuant to the Board's order the undersigned Committee of three neutral persons was appointed with the responsibility

> . . . to conduct a public hearing on these cases to afford all interested parties an opportunity to present pertinent data, evidence and argument in support of their respective position, and, therefore, . . . designate the employees who may participate in any elections which may be ordered by the National Mediation Board pursuant to its rules and regulations.[a]

Thereafter, Eastern Air Lines, Inc.; the International Brotherhood of Teamsters; the Air Line Employees Association, International; Pan American World Airways, Inc.; United Air Lines, Inc.; the Air Line Dispatchers Association; the Air Transport

---

a. *National Mediation Board Order, Case Nos. R–3712, R–3713, R–3714,* November 4, 1964.

Association of America; Seaboard World Airlines, Inc.; the Transport Workers Union of America; and the International Association of Machinists notified the Board of their interest in these disputes and of their desire to be heard and to participate in any hearings which might be held.

The Neutral Committee held public hearings in New York City on December 4, 1964, January 7, 8, 13, 14, and 15, March 10, 11, 12, and June 7, 1965. All parties in interest were given an opportunity to present evidence in the form of exhibits and oral or written testimony, to cross-examine witnesses, and to present argument in the form of briefs. The AMFA submitted its brief on June 18, 1965 and Eastern Air Lines, United Air Lines, the International Association of Machinists, Seaboard World Airlines, the Transport Workers Union, and the Air Transport Association submitted their briefs on July 2, 1965. After their receipt by the Committee the record was declared closed as of July 6, 1965.

THE ISSUES

The basic issue before the Committee is to determine whether, for election purposes, the craft or class of "Aircraft Mechanic" sought by the AMFA on Eastern Air Lines, United Air Lines, and Seaboard World Airline is a proper craft or class for purposes of representation as contemplated by the Railway Labor Act. Further, it is the task of the Committee to determine which classification of employees in what is now commonly known as the craft or class of "Airline Mechanics and Related Employees" should be entitled to vote in any election which the Board may see fit to order under its rules and regulations.

FINDINGS OF FACT

On the basis of the entire record we find:

1. The employees involved in this dispute are "employees" within the meaning of Section 1, Fifth and Section 2, Ninth of the Railway Labor Act.

2. The carriers—Eastern Air Lines, United Air Lines, and Seaboard World Airlines—are carriers as defined in Section 201, Title II and Section 2, Ninth of the Railway Labor Act.

3. The International Association of Machinists, herein referred to as "IAM," is a labor organization and representative as defined in Section 1, Sixth and Section 2, Ninth of the Railway Labor Act.

4. The Transport Workers Union of America, herein referred to as "TWU," is a labor organization and representative as defined in Section 1, Sixth and Section 2, Ninth of the Railway Labor Act.

5. The Aircraft Mechanics Fraternal Association, herein referred to as "AMFA," is a labor organization as defined in Section 1, Sixth and Section 2, Ninth of the Railway Labor Act.

6. The National Mediation Board on October 1, 1945 issued its decision in Case No. R–1447. This decision had the effect of establishing the craft or class of what has come to be known in the industry as "Airline Mechanics and Related Employees." The decision in R–1447 is the basic determination in the airline industry today with respect to the proper craft or class for representation purposes among mechanics and related personnel.

7. Through the years the National Mediation Board in its determination of craft or class matters has consistently given great weight to the historical relationships established by employees and the carriers.

8. From its early days the National Mediation Board has refused to create arbitrary craft or class groupings, and impose them upon the employees and the carriers. Rather, it has sought, in so far as possible, to determine the proper craft or class on the basis of the patterns of organizations and collective bargaining relationships which had developed. Likewise, the Board has generally declined to divide and carve up existing craft or class groupings and thus to multiply subcrafts and subclasses.

9. The National Mediation Board has on numerous occasions since 1945 reaffirmed its basic craft or class determinations in R–1447 with the result that such a craft or class is a fact of life on ten of the nation's domestic trunk carriers and on the United States flag international carriers. (The mechanical employees are unorganized on Delta Airlines, the eleventh domestic trunk air carrier.)

10. The petitioner involved herein, the AMFA, takes the position that the decision in R–1447 is outdated and that it no longer provides an adequate basis for establishing the craft or class within which mechanics who work on the aircraft or its components should choose a representative.

11. The AMFA states that under current conditions representation should be selected for a craft or class which it calls Aircraft Mechanics. The AMFA proposes that craft or class be comprised of the following classifications on each of the three carriers involved in this proceeding:

EASTERN AIR LINES

a. Aircraft Inspectors
b. Aircraft Mechanics, line and shop (not including Automotive or Building Maintenance Mechanics), licensed and unlicensed
c. Apprentice Mechanics
d. Flight Simulator Technicians
e. Leads in these classifications

UNITED AIR LINES

a. Aircraft Inspectors
b. Shop Inspectors

c. Line, hanger and shop Aircraft Mechanics (not including Automotive or Building Maintenance Mechanics), licensed and unlicensed
d. Apprentice Mechanics
e. Flight Simulator Technicians
f. Leads in these classifications

SEABOARD WORLD AIRLINES

a. Aircraft Inspectors
b. Aircraft Mechanics and Senior Mechanics, line and shop (not including Automotive and Building Maintenance Mechanics) licensed and unlicensed
c. Off-route Station Mechanics
d. Mechanic Helpers, line and shop
e. Leads in these classifications.

12. It appears from the AMFA applications and from the evidence that if the craft or class of Aircraft Mechanic were established, the following classifications presently covered by the craft or class of Airline Mechanics and related Employees or other crafts or classes would be excluded:

EASTERN AIR LINES

a. Building and Maintenance Mechanics
b. Automotive Mechanics
c. Ground Communications Technicians
d. Cleaners
e. Shop Laborers
f. Shop Janitresses
g. Print Shop employees
h. Ramp-Service employees
i. Stock Clerks
j. Leads and Seniors in these classifications

UNITED AIR LINES

a. Ground equipment employees
b. Ramp-Servicemen
c. Flight Kitchen employees
d. Utility employees
e. Fuelers
f. Seamstresses
g. Plant Maintenance employees
h. Stores employees
i. Security Guards
j. Crew Car Drivers
k. Ground Communications Technicians
l. Mechanic Helpers
m. Leads in the above classifications

SEABOARD WORLD AIRLINES

a. Cleaners
b. Cabin Servicemen
c. Stock Clerks
d. Cargo Servicemen
e. Leads in the above classifications.

13. There is presently no clasification of "Aircraft Mechanic" on any of the subject airlines or in the air transport industry.

14. The record shows that on each of the involved airlines the groupings of employees proposed by the AMFA constitute a majority in the existing Airline Mechanics and Related Employees craft or class.

15. The parties opposed to the petition, namely Eastern, United, Seaboard World, the ATA, the IAM, and the TWU make the following contentions:

a. The grouping of employees in a craft or class of Aircraft Mechanics proposed by the AMFA does not conform to the concept of craft or class embodied in the Railway Labor Act. Neither does it meet the standards long recognized in craft or class determination made by the National Mediation Board.
b. The record does not support the contention of the AMFA that technological changes in the airline industry have so changed the duties and functions of airline mechanics as to justify a repudation of the principles of R–1447 and the creation of a new grouping of classifications for representation purposes. The carriers contend that the fundemental skills of the classifications involved have not changed significantly since R–1447 was decided in 1945. The organizations, without subscribing to that contention, join the carriers in maintaining that skill levels alone have not been deemed basic in craft or class determinations.
c. The proposed grouping of employees for representation purposes is unnecessary to protect the interests of these employees. They are not a submerged minority in a sea of unskilled classifications.

DISCUSSION

Section 2, Fourth of the Railway Act accords "The majority of any craft or class of employees the right to determine who shall be the representative of the craft or class...." The Act does not define the term "craft or class;" in the opinion of the drafters of the 1934 amendments those words had a meaning long established in labor parlance that was not likely to produce disputes and if they did, these could be resolved by the machinery erected in Section 2, Ninth.

The National Mediation Board, however, soon was constrained

to give more precise content to this general phrase. In its First annual report the Board stated:

> In making rules to govern elections and in designating the employees who may participate in such elections, the Board in most cases has been confronted with disuptes as to whether the employees involved constitute one craft or class, or whether they are several distinct crafts for each of which separate representatives are to be chosen by separate majorities. So far as possible the Board has followed the past practice of the employees in grouping themselves for representation purposes and of the carriers in making agreements with such representatives.

This approach emerged from a background of a long history of collective bargaining in the railroad industry predating the Act, during the course of which employees had voluntarily grouped themselves for representation purposes and carriers had made agreements with the representatives of these groups. Despite the existence of a history of representation on the railroads, however, the Board was confronted with requests from particular classifications for the establishment of separate crafts or classes. It soon found it necessary to stem a tendency toward the fragmentation of previously established groupings. In its First Annual Report the Board stated that it:

> ". . . is impressed that the tendency to divide and further subdivide established and recognized crafts and classes of employees has already gone too far, and threatens to defeat the main purposes of the Railway Labor Act, namely the making and maintaining of agreements . . . and the avoidance of labor disputes.
> "The Board is inclined, therefore, during the coming year to avoid unnecessary multiplication of subcrafts and subclasses, and to maintain, so far as possible, the customary grouping of employees into crafts and classes as it has been established by accepted practice over a period of years in the making of wage and rule agreements."

This policy of primary reliance on "the customary groupings of the employees into crafts and classes as it has been established by accepted practice over a period of years..." has remained the policy of the Board since its establishment.".[c]

The Board has also applied the following principles in making craft or class determinations: extent and nature of the collective bargaining arrangements developed by the parties; duties, responsibilities, skill, training, and experience of the employees involved and the nature of their work; usual practices of promotion, demotion and seniority observed or developed for the employees concerned; nature and extent of community of interest among the employees.

In R–1447 the Board restated its reliance on the principle of historical groupings as its chief guide in craft or class determinations. It stated that:

> ". . . a 'craft or class' in the air transport industry means a well-knit and cohesive occupational group which has been developed over a period of years in the course of

b. *First Annual Report of the National Mediation Board*, p. 21.
c. *Chicago & N. W. Ry. Co.*, 1 *NMB Determinations* 32 (1937); *Seaboard Air Line Ry. Co.*, 1 *NMB Determinations* 167 (1940); *Chicago N. S. & N. R. Co.*, 1 *NMB Determinations* 101 (1953); and *Chicago, M., St. P. & P. Ry. Co.*, 3 *NMB Determinations* 120 (1955).

general voluntary association of the employees in collective bargaining units. . . . Accordingly it becomes necessary to examine the occupational groupings as they have emerged over a period of years in the airline industry, and the determine whether such groupings are uniform to the extent that they might now be termed 'crafts or classes' under the provisions of the Railway Labor Act."

In the then young air transport industry the Board found no clear-cut preexisting pattern of groupings of classifications for representation and collective bargaining purposes. Hence it turned to an examination of the history of organization among airline employees in its search for natural and logical groupings of employees for representaion purposes.

Here it found that "practically without exception airline mechanics were the first occupational craft or class to be organized and covered by agreements with the air carriers," but that in succeeding years other groups, including plant maintenance force, fleet service personnel and ground service personnel secured representation and coverage by agreements. In some cases this coverage was under agreements with mechanics; in others they were covered by separate agreements.

The Board also observed that on the airlines (in contrast to the railroads) "no hard and fast jurisdicational divisions have developed among airline mechanics," and that the airline mechanic is "an all-around mechanic capable of performing any kind of maintenance work required on an aircraft, engine, or accessory equipment." Furthermore, the Board found that such employees as aircraft cleaners, parts washers, plant maintenance mechanics and the service groups known variously as "ground service," "fleet service," or "utility" were closely associated with the airlines performing specialized tasks which on the smaller carriers was "in the main performed by the mechanical forces." On the basis of the trends and tendencies observed by the Board in the history of organization among airline employees, it found that:

"The preponderance of evidence seems to indicate that employees of airlines who perform work such as is described above belong naturally with the mechanical or maintenance group, and should be included, with the airline mechanics in one craft or class for representation purposes, since jurisdictional craft lines are historically absent among the maintenance of equipment employees of the air carriers."

In summary, the National Mediation Board in R–1447 considered and specifically rejected the type of alternative presented in the AMFA petition now before us of setting up mechanics who work on the airplane or its components, as distinct from those who work on plant or ground equipment maintenance or from those who perform the semi-skilled or unskilled tasks related thereto, as a separate craft. It specifically rejected a narrow craft concept as unsuited to the airlines industry and as foreign to the historical development of its job structure and its pattern of self-organization. Thus as early as September 1945 in Case No. R–1368, the Board rejected a plea by the IBEW that

mechanic employees of American Airlines be deemed a separate craft or class and found them to be part of the craft or class of airline mechanics.

Instead of narrow craft units, the Board in R–1447 found the proper unit to be the class of "maintenance of equipment employees," composed of the airline mechanic classification, the ground service classification, the plant maintenance personnel classification and the fleet service personnel classification. Each of these classifications in turn consisted of a variety of occupations or sub-specialists varying in scope from airline to airline. The Board since R–1447 has made craft or class determinations in the airline industry on this basis with certain modifications not here relevant.

The AMFA in the petition before us asks that this basic pattern of craft or class determinations be scrapped. It contends that the craft or class grouping established in the airline industry by R–1447 is outdated and no longer fills the public need. It claims that the expansion of the industry and the technological changes that have taken place in it have created a need for a new approach to collective bargaining representation. It asks for the establishment of a craft or class consisting of those who:

> are trained to and possessed of sufficient skill to do and who in fact do mechanical work on the aircraft and its components and who are personally and directly responsible for the airworthy condition of the aircraft and its components.

We find that there is no justification for granting the AMFA petition.

Our reasons are set forth below:

1. There is no historical basis for the grouping the AMFA seeks. As pointed out above, a statutory "craft or class of employees" is that grouping of employees who have historically been associated with one another in making and administering agreements with carriers. The Board has consistently held that where there is an established, customary, or historical craft or class it is without power to subdivide it or create new ones.[d]

At the present time in the airlines industry there is a historical grouping of employees for representation purposes. It grew out of the pattern of self-organization and collective bargaining in the industry that the Board found to exist at the time of R–1447. That grouping, established by R–1447, has constituted the historical framework for collective bargaining for mechanics and related personnel in the air transport industry since that date. The AMFA now asks that a portion of the classification of this grouping be carved out and be deemed to constitute a distinct craft or class. The grouping it seeks has never been viable in the industry. Functions performed by mechanics on the aircraft

d. *Ibid.*

have always been regarded as closely related to those performed by mechanics on ground equipment or in plant maintenance. The basic nature of the skills required, the aptitudes for the work, the previous educational levels required, the periods of training or apprenticeship are about the same. There may or may not be differences in the skill requirements of mechanics who work on aircraft and those who work on ground equipment or in plant maintenance. But in any event such differences would not in and of themselves justify the creation of a separate craft or class for representation purposes.

The related employees in the present craft or class, while of different skill levels from the mechanics, nonetheless are closely related to them in that they are engaged in a common function—the maintenance function on an airline of which the maintenance of airplanes and the maintenance of mobile ground equipment or of fixed facilities are all integral parts.

The grouping the AMFA now seeks to split has become, over a period of twenty years, the established, recognized or customary craft or class that constitutes the structure for representation of mechanical and related employees in the industry. The Board's policy, reflecting the intent of the Railway Labor Act, is to honor such customary groupings in class or craft determinations absent a showing of markedly changed conditions or other good cause to justify alteration of the established patterns of bargaining.

2. The changes that have occured in the industry since 1945, have not produced significant changes in duties and functions so as to justify a change in the existing groupings.

It is not to be inferred that once a craft or class determination is made it is thereafter immutable and sacrosanct. The Railway Labor Act does not function in a static industry nor in an unchanging economy. The airlines industry is constantly undergoing changes in technology or in the organization of work. Changed conditions could conceivably render obsolete an existing craft or class grouping for purposes of collective bargaining. But the changed conditions, in order to constitute justification for a revision in a craft or class grouping would have to result in changed *duties* or *functions* which so alter the nature of the classifications as to make their inclusion in the existing grouping no longer appropriate.

The AMFA has failed to produce credible evidence of a change in the functions and duties of the classifications it seeks to have segregated into a separate craft or class that would justify such a split-off. Its references to the increased speed and changed design of modern aircraft and engines point, at most, to changes in the skill requirements of the job of mechanic and even this point was contested by the carrier representatives. In any case, we need not pass on it for the existing grouping of classi-

fications into the current craft or class of Airline Mechanics and Related Employees was not made on the basis of an identity of skill requirements. Changes in the skill requirements of the classifications in the present grouping, if they have in fact occured, may contitute a basis for negotiation of wage differentials in collective bargaining but they do not constitute justification for the creation of a separate craft or class.

3. The AMFA petition would place into separate bargaining units employees who have long had a community of interest. The AMFA suggested that the employees it seeks to represent have a community of interest among themselves, but not with other employees in the present craft or class. It has emphasized the matters of "common skill and common responsibility" and "of speaking the same language occupationally." However, the community of interest concept which must concern us here goes to the considerations which affect all members of the unit, and not just those performing particular functions within the mechanic classification. Mechanics engaged in various functions, such as instrument and radio work, painting, and other line and shop activities, do not necessarily speak the same language occupationally, nor are they necessarly bound together by a common skill and responsibility.

The significant community of interest relates to the fact that all members of the present craft or class are engaged in performing the same general function—maintenance of the airline, whether it be maintenance of aircraft, of buildings, or of equipment. This interest is tied together by seniority rights in bumping in the case of employment cutbacks, in bidding for different jobs at the same occupational level, and in the filling of promotional opportunities. Spliting the unit could result in the elimination of these contractual rights.

It goes without saying that both groups have similar interests under particular contracts in such matters as overtime rates, paid holidays, vacations, sick leave, shift starting times, rotating versus fixed shifts, and insurance programs. This long established community of interest could be seriously disturbed if there were different unions and different contracts. Instability of labor relations rather than the stable situation which the Act seeks to establish could result. On this point the Board said as early as 1942:

> "The Board views with some concern the tendency to divide established and well recognized crafts or classes. . . . Once the bars are down, there is no logical stopping place and such a course would ultimately defeat real collective bargaining as contemplated by the law. On the other hand, stabilization of well recognized crafts or classes as they have been generally established on carriers under the act by the employees and management after long years of negotiations will . . . tend to stabilize collective bargaining relationships."[9]

[9]. *8th Annual Report of the National Mediation Board.* (1942), p. 6.

4. The AMFA petition if granted would frustrate rather than effectuate the basic purposes of the Railway Labor Act, which imposes the obligation to make and maintain agreements, by producing jurisdictional disputes for which no remedial mechanism is available.

One of the basic purposes of the Railway Labor Act is to stabilize employee-employer relations through collective bargaining. The achievement of this purpose requires a collective bargaining arrangement which will result in minimizing or settling disputes which may arise.

A serious possible consequence of granting the AMFA petition is the likely increase in jurisdictional disputes. While the AMFA has expressed the view that this danger is exaggerated by the opponants of the petition, it has nevertheless taken positions, expressed by its spokesmen in this proceeding, regarding work assignments and job classifications which could result in numerous jurisdictional disputes.

While the Railway Labor Act provides for a variety of dispute-settling procedures, it does not establish any arrangement for the settlement of jurisdictional disputes where two or more unions are involved as representatives of different craft or class units. The AMFA's contention to the contrary is ill-informed and not in accordance with long experience under the Act.

It is common knowledge that work assignment disputes arise between individuals and between groups. One of the virtues of the existing craft or class is that it allows considerable flexibility in making work assignments. Furthermore, when disputes arise concerning work assignments they can be resolved by the dispute-settlement provisions of the collective bargaining agreement. By the terms of Title II of the Railway Labor Act, all such agreements must provide for the establishment and maintenance of System Boards of Adjustment.

Disputes between representatives of different crafts or classes are not covered by such procedures. The jurisdictional difficulties which may arise between different crafts and classes are well illustrated by the history of the so-called "third party" issue before the divisions of the National Railroad Adjustment Board. Over a period of years this issue has frustrated the settlement of dispute over work assignment and work jurisdiction between different bargaining agents on the railroads.

It is obvious that if the AMFA petition were granted, such dangers would be greatly magnified to the disadvantage of the employees, the carriers, and the public.

Having found that the AMFA position as to craft or class cannot be sustained, we now address ourselves to the matter of determining which classifications of employees in the craft or class of Airline Mechanics and Related Employees should be entitled to vote in any election which the Board may see fit to order

pursuant to its rules and regulations. The IAM and the TWU (supported by Eastern Air Lines for Ramp-Service employees and Stock Clerks, and by Seaboard World Airlines for Cargo Service personnel) have also requested that the Mechanics and Related Employees craft or class as now established be expanded to include employees performing fleet service and stockroom duties.

The state of the record does not permit a determination whether stockroom employees should be added to the craft or class of Mechanics and Related Employees at Eastern and United, or whether print shop employees should be added to that craft or class at Eastern, or whether fleet service should be added to that craft or class on United Air Lines. Therefore, any requests to expand the existing craft or class to include any of the above classifications will be dismissed without prejudice to any future proceedings.

In the particular circumstances of the cases before us an enlargement of the craft or class of Mechanics and related Employees is indicated for Eastern Air Lines and for Seaboard World Airlines as to include all Ramp-Service employees employed by Eastern and Ramp Service personnel at Seaboard World.

The question of whether elections should be held following these proceedings is, under the law, a matter for the Board to decide. However, we note for the Board's consideration the IAM contention that ordering an election would not be appropriate in the event the AMFA's position as to craft or class is rejected. The IAM argues that no election should be conducted at Eastern or United inasmuch as the AMFA cannot, under its own constitution and by-laws, provide representation for the entire craft or class of Airline Mechanics and Related Employees. The Committee notes in passing that the record is clear that up to now the AMFA has explicitly stated that it does not seek to represent employees in a unit broader than the one it has urged in these proceedings.[1]

CONCLUSIONS

1. The request of the Aircraft Mechanics Fraternal Association for the establishment of a separate craft or class of "Aircraft Mechanic" is denied.

2. The proposal to expand the existing craft or class of Airline Mechanics and Related Employees" to include the stockroom and fleet service employees of United Air Lines, Inc. are dismissed without prejudice to any future proceedings.

3. If the Board should order an election, the following classifications of employees on each airline shall be voted together on one ballot for each airline respectively for the purpose of represen-

1. Testimony of O. V. Delle Femine, AMFA Exhibit 18, pp. 25–27, and Tr. p. 1612.

tation under Section 2, Ninth of the Railway Labor Act amended:

EASTERN AIR LINES, INC.—CASE NO. R–3712

Inspectors
Lead Mechanics (line or shop)
Mechanics (line or shop)
Apprentice Mechanics
Lead Ramp-Service Men
Ramp-Service employees
Lead Cleaners
Cleaners
Lead Shop Laborers
Shop Laborers
Shop Janitresses
Lead Ground Communication and Flight Simulator Technicians
Ground Communication and Flight Simulator Technicians

UNITED AIR LINES, INC.—CASE NO. R–3713

Lead Mechanics
Aircraft Inspectors
Shop Inspectors
Mechanics
Mechanics' Helpers
Apprentice Mechanics
Ground Communications Technicians
Utility Employees
Cleaning Women
Lead Fuelers
Fuelers
Seamstresses
Flight Simulator Technicians
Lead Flight Simulator Technicians

SEABOARD WORLD AIRLINES, INC.—CASE NO. R–3714

Inspectors
Lead Mechanics
Senior Mechanics
Mechanics
Off-route Station Mechanics
Mechanic Helpers

Lead Cleaners
Cleaners
Cabin Service Men
Stock Clerks

Lead Stock Clerks

68 DETERMINATION OF CRAFT OR CLASS

Cargo Service Men
Lead Cargo Service Men

Signed

Saul W illen
Chairman, Neutral Committee

Ronald W. Haughton
Member, Neutral Committee

Paul N. Guthrie
Member, Neutral Committee

G.P.O.—J-297-417

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

In the matter of REPRESENTATION OF EMPLOYEES of EASTERN AIR LINES, INC. Flight Dispatchers and Assistants	CASE NO. R-4270 CERTIFICATION January 26, 1972

The services of the National Mediation Board were invoked by the Transport Workers Union of America, AFL-CIO on November 24, 1971, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Flight Dispatchers and Assistants, employees of Eastern Air Lines, Inc.

At the time application was received, these employees were represented by the Air Line Dispatchers Association.

The Board assigned Mediator Warren S. Lane to investigate.

FINDINGS

On December 14, 1971, application was received from the International Association of Machinists and Aerospace Workers, AFL-CIO to intervene in this dispute. The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator was instructed to conduct an election by secret ballot, using an agreed to eligible list to determine the employees' representation choice.

The following is the result of the election as reported by Mediator Robert B. Martin, who was assigned to count the ballots in this case and attested thereon by the party observers.

Number of Employees Voting:

	Int'l Association of Machinists & Aerospace Workers, AFL-CIO	Transport Workers Union of America, AFL-CIO	Air Line Dispatchers Association	Any Other Organ. or Individual	Void Ballots	Number of Employees Eligible
Flight Dispatchers & Assistants	89	5	17	1	1	123

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act and based upon its investigation pursuant thereto the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act the craft or class of Flight Dispatchers and Assistants, employees of Eastern Air Lines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Thomas A. Tracy
Executive Secretary

A-30

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

In the matter of	:	
REPRESENTATION OF EMPLOYEES	:	CASE NO. R-4336
of	:	CERTIFICATION
EASTERN AIR LINES, INC.	:	April 25, 1973
Ground School Instructors	:	

The services of the National Mediation Board were invoked by the Airline Division-International Brotherhood of Teamsters, Chauffeures, Warehousemen and Helpers of America on October 10, 1972, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, Ground School Instructors, employees of Eastern Air Lines, Inc.

At the time application was received, these employees were represented by the Air Line Employees Association.

The Board assigned Mediators Warren S. Lane and Charles H. Callahan to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator was instructed to conduct an election by secret ballot, using an agreed to eligible list to determine the employees' representation choice.

The following is the result of the election as reported by Mediator Callahan, who was assigned to count the ballots in this case and attested thereon by the party observers.

Number of Employees Voting:

	Air Line Employees Association, Int'l	Int'l Brotherhood of Teamsters	Any Other Org. or Individual	Number of Employees Eligible
Ground School Instructors	9	7	29*	51

*29 write in ballots were cast for the International Association of Machinists and Aerospace Workers, AFL-CIO.

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act and based upon its investigation pursuant thereto, the National Mediation Board certifies that the International Association of Machinists and Aerospace Workers, AFL-CIO, has been duly designated and authorized to represent for the purposes of the Railway Labor Act, Ground School Instructors, employees of Eastern Air Lines, Inc., its successors and assigns.

This certification does not establish a precedent or preclude an ultimate determination in any future representation dispute as to the proper classification of these employees for representation purposes.

By order of the NATIONAL MEDIATION BOARD.

Thomas A. Tracy
Executive Secretary

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

ROBERT E. REYNOLDS and
DARIUS MOLES, JR.,

Plaintiffs,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO, and LOCAL UNION NO. 2444,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO,

Defendants.

CIVIL ACTION FILE
NO. C-179-WS-73

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came before this Court on the defendants' motion to dismiss with an affidavit attached and on plaintiffs' motion for a preliminary injunction. Each party filed memoranda in support of their respective motions. Since defendants' motion was directed to the jurisdiction of this Court to entertain the complaint, it was considered prior to plaintiffs' motion. The Court heard oral argument by counsel for each of the parties.

The Court now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiffs are employees of Piedmont Aviation, Inc. in the "building and maintenance" and "general aviation" departments or divisions of that company.

2. The defendants are the International Association of Machinists and Aerospace Workers, AFL-CIO, an unincorporated labor organization, and its affiliate, Local Union No. 2444.

3. Following an election conducted by the National Mediation Board, the defendant International Association of Machinists and Aerospace Workers, AFL-CIO, on December 3, 1970, was certified by the National Mediation Board as having "been duly designated and authorized to represent, for the purposes of the Railway Labor Act, the craft or class of Airline Mechanics and Related Employees, employees of Piedmont Airlines, its successors and assigns."

4. On January 20, 1971, the International Association of Machinists and Aerospace Workers served a notice upon Piedmont Airlines, pursuant to Section 6 of the Railway Labor Act, of its desire to negotiate a collective bargaining agreement pursuant to its certification by the National Mediation Board.

5. During the ensuing conferences between the IAMAW and Piedmont, disputes developed on a number of issues, including the employees to be covered, which resulted in an impasse.

6. On April 26, 1971, Piedmont invoked the mediation services of the National Mediation Board pursuant to Section 5 of the Railway Labor Act and on May 7, 1971, the Board docketed the dispute as NMB Case No. A-9034.

7. Thereafter, mediation was conducted by Board Mediator C. A. Peacock. The mediation efforts were unsuccessful and the IAMAW set a strike date for October 11, 1971.

8. The Board proffered its further mediation services, which proffer was accepted by the parties.

9. On October 29, 1971, the IAMAW and Piedmont signed a Mediation Agreement, effective November 8, 1971, witnessed by Mediator Peacock, disposing of the dispute. On November 29, 1971, the Board closed its file on NMB Case No. A-9034.

10. The agreement covers employees of Piedmont Airlines "in the inspection, maintenance and overhaul functions of the airline division in its shops, hangars, or locations . . . ."

11. The agreement does not cover employees of Piedmont Aviation, Inc. in its "building and maintenance" and "general aviation" divisions and therefore does not cover plaintiffs.

12. Plaintiffs claim to be members of the class or craft of "Airline Mechanics and Related Employees" on Piedmont which defendant IAMAW was designated by the Board to represent.

13. Plaintiffs claim that their exclusion from the collective bargaining agreement, executed under the auspices of the Board, constituted an "illegal, invidious and hostile act by defendants against plaintiffs."

14. Plaintiffs seek injunctive relief and actual and punitive damages.

15. Defendants filed a motion to dismiss the complaint contending this Court lacks jurisdiction of this action

because jurisdiction to determine whether plaintiffs are members of the craft or class of "Airline Mechanics and Related Employees" on Piedmont Airlines is exclusively that of the National Mediation Board and plaintiffs have failed to join indispensable parties as parties defendant herein, namely, Piedmont Airlines and those individual employees of Piedmont who are within the coverage of the agreement.

CONCLUSIONS OF LAW

1. The plaintiffs' claim of violation by defendants of the latter's duty to fairly represent plaintiffs can prevail only if it is established that defendants have a statutory duty to represent plaintiffs.

2. Defendants are required by the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.] to represent all employees of Piedmont Airlines who are members of the craft or class of "Airline Mechanics and Related Employees".

3. If plaintiffs are members of the craft or class of "Airline Mechanics and Related Employees" of Piedmont Airlines, defendants are bound by statute to represent them. However, if plaintiffs are not members of that craft or class, defendants owe them no duty of representation.

4. The primary issue presented by the complaint is whether plaintiffs are members of the craft or class of "Airline Mechanics and Related Employees" of Piedmont Airlines.

5. Decisions of the United States Supreme Court and the Court of Appeals for this Circuit have firmly

established that the resolution of such issues are within the exclusive jurisdiction of the National Mediation Board. Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297 (1943); General Committee, Etc. v. Missouri-Kansas-Texas Railroad Co., 320 U.S. 323 (1943); General Committee, Etc. v. Southern Pacific Company, 320 U.S. 338 (1943); Division No. 14, The Order of Railroad Telegraphers v. Leighty, 298 F.2d 17 (4th Cir., 1962); Rose, et al. v. Brotherhood of Railway and Steamship Clerks, Etc., 181 F.2d 944 (4th Cir., 1950), cert. den., 340 U.S. 851 (1950). In the Rose case, the Court of Appeals for this Circuit ruled as follows:

> "In the light of the decisions of the Supreme Court, there can be no doubt that the effect of this statute was to vest in the Mediation Board exclusive jurisdiction over the certification of bargaining agents, the determination of bargaining units and the classification of employees for the purposes of bargaining. And it is equally clear that the exercise of discretion by the board with respect to such matters is not subject to review by the courts. Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297, 64 S.Ct. 95, 88 L.Ed. 61; General Committee etc. v. M-K-T. R. Co., 320 U.S. 323, 64 S.Ct. 146, 88 L.Ed. 76; Brotherhood of Railway Clerks etc. v. United Transport Service Employees, 320 U.S. 715, 64 S.Ct. 260, 88 L.Ed. 420; Order of Railway Conductors of America, etc. v. Penn. R. Co., 323 U.S. 166, 65 S.Ct. 222, 89 L.Ed. 154; Steele v. L. & N. R. Co., 323 U.S. 192, 205, 65 S.Ct. 226, 89 L.Ed. 173. And see Slocum v. D. L. & W. R. Co., 339 U.S. 239, 70 S.Ct. 577."

In the same opinion, the Court of Appeals relied upon the following quotation from the United States Supreme Court's decision in Steele v. L. & N. R. Co., 323 U.S. 192 (1944);

> "There is no question here of who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board, . . ." (Emphasis by the Court of Appeals.)

6. The primary issue presented by the complaint is within the exclusive jurisdiction of the National Mediation Board and this Court, therefore, is without jurisdiction to entertain the complaint.

7. In light of this Court's decision on the exclusive jurisdiction of the National Mediation Board to resolve the primary issue presented by the complaint, we do not reach the remaining issues raised by the motion to dismiss or plaintiffs' motion for preliminary injunction.

8. Defendants' motion to dismiss, having an affidavit attached thereto, will be treated as a motion for summary judgment, pursuant to the provisions of Rule 12 of the Federal Rules of Civil Procedure, 28 U.S.C., and as such, is granted. An appropriate order will be entered accordingly.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

ROBERT E. REYNOLDS and
DARIUS MOLES, JR.,

Plaintiffs,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO, and LOCAL UNION NO. 2444,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO.

Defendants.

CIVIL ACTION FILE
NO. C-179-WS-73

JUDGMENT AND ORDER DISMISSING COMPLAINT

This cause having come on before this Court on the motion of defendants to dismiss, with attached affidavit, and the motion of plaintiffs for preliminary injunction, and the Court having read the memoranda submitted and heard the arguments of counsel;

It is now ordered, adjudged and decreed that defendants' motion is granted and the complaint be, and it is hereby, dismissed.

Hiram H. Ward
United States District Judge

November 28, 1973

A True Copy
Teste:
Carmon J. Stuart, Clerk
By: Virginia H. Burkhart
Deputy Clerk

UNITED STATES COURT OF APPEALS JUL 2 1974

FOR THE FOURTH CIRCUIT

No. 74-1211

49-PIEDMONT

Robert E. Reynolds and
Darius Miles, Jr.,

Appellants,

versus

International Association of
Machinists & Aerospace Workers,
AFL-CIO, and
Local Union No. 2444, International
Association of Machinists & Aerospace
Workers, AFL-CIO,

Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Hiram H. Ward, District Judge.

Argued June 7, 1974. Decided June 27, 1974

Before WINTER, BUSSELL and FIELD, Circuit Judges.

Larry L. Eubanks (W. Britton Smith, Jr., and Thomas J. Bolch on brief) for Appellants; William G. Mahoney (Highsaw and Mahoney; Benn Drum; Drum, Liner and Redden on brief) for Appellees.

PER CURIAM:

After oral argument, we affirm on the opinion of the district court. Plaintiffs have the right, under 45 U.S.C. § 152, Ninth, to obtain a decision from the National Mediation Board as to whether they are included within the bargaining unit for which an employment contract has been negotiated.

AFFIRMED.

6. On December 28, 1972, plaintiff TWA and defendant IAM entered into working agreements pursuant to the RLA embodying the rates of pay, rules and working conditions of the TWA employees in the aforesaid classes or crafts. Each of said agreements provided that the agreement "shall remain in full force and effect to and including August 31, 1973, and thereafter shall be subject to change as provided in Section 6 of the Labor Act, as amended".

7. Pursuant to the said provisions of said agreements, one or more of the parties proposed changes in said agreements, and from no later than June 24, 1974 until the present time, a negotiating committee of IAM District 142 and TWA have been in mediation before the National Mediation Board concerning the disputes arising over said proposed changes, no agreement having yet been reached.

8. Commencing on or about August 12, 1974 and continuing to date, TWA employees represented by IAM and members of IAM at TWA's Technical Services Center at the Kansas City International Airport engaged in concerted slowdowns, interruptions and stoppages of work and other concerted interference with TWA's normal operations.

9. On August 12, 1974, TWA representatives met with the Union's full-time committee concerning said problem, and on August 15, 1974, TWA representatives again brought the aforesaid actions to the attention of IAM representatives at Kansas City International Airport, and said IAM representatives advised TWA that such actions had not been authorized by the IAM, but that the IAM did not intend to take any action to end such activity by the aforesaid members of the IAM.

10. On August 14, 1974, the IAM, through IAM District 142 and its negotiating committee, including defendants Kerr and Bay, issued a bulletin to the members of the IAM employed by TWA which encouraged the aforesaid employees and IAM members throughout the TWA system to engage in the activities above-described.

11. The aforesaid actions have already resulted in loss of substantial production to TWA at the Technical Services Center in Kansas City, Missouri and created safety hazards for personnel working at the base.

12. The aforesaid activities have already increased the number of delays in TWA operations and will continue to do so at an increased rate if the activities described are not discontinued, resulting in serious and irreparable injury to TWA.

Conclusions of Law

1. TWA, its employees, the IAM, IAM District Lodge 142, IAM Local Lodge 1650 and their officers, agents are subject to the Railway Labor Act, as amended ("RLA").

2. So long as the dispute over proposed changes in the TWA-IAM working agreements dated December 28, 1972 is in mediation before the National Mediation Board pursuant to Section 5 of the RLA, and for 30 days after termination of such mediation services by the National Mediation Board, the RLA prohibits activities by IAM members and organizations of the character described in paragraphs 8 & 10 of the Findings herein, and the IAM representatives of said employees are obligated under Section 2, First [paragraph] of the RLA to exert reasonable efforts to end any such activities by IAM members in violation of the RLA.

3. Plaintiff is entitled to a preliminary injunction against future violations of the RLA, and to the posting of a notice by IAM District 142 advising its locals, officers, members of their obligations under the RLA, as provided in the annexed Order for Preliminary Injunction.

[¶ 10,313] John G. Strong et al., Plaintiffs v. Sheet Metal Workers' International Association et al., Defendants. Local Union 75, Intervenor. No. C-73-1700.

Douglas C. Olsen, etc., Plaintiff v. Sheet Metal Workers' International Association et al., Defendants. No. C-73-1829.

United States District Court, Northern District of California. February 4, 1974.

Labor-Management Reporting and Disclosure Act

Rights of Union Members—Merger of Local Unions—Effect on Local Membership. —The merger of San Francisco Bay area local unions into one local union, resulting in the transfer of members of a particular local into one local union, was not done in retaliation for the local's rejection of a stabilization agreement of the sheet metal industry or for its entering into another industrial agreement, but, rather, was implemented for the

purpose of increased operating efficiency and avoiding competition among the many sheet metal worker locals in the area, which had an adverse effect upon the development of the union sector of the sheet metal industry. Apart from the merger itself, there was no evidence of any action by the international that restricted the members' right of voting, assembly and speech guaranteed them as members of a union by federal labor law, and the merger itself was proper under the union constitution. LMRDA, Section 101.

Back reference.—¶ 7477.15.

Rights of Union Members—Disciplinary Action—Diminution of Voting Strength Through Merger.—In light of the safeguards to protect fully the political and the contractual rights of members of a local union who were transferred to other locals following a merger, and in the absence of proof establishing an intent on the part of the international and its president to punish the locals involved, the mere diminution of voting strength resulting from the transfers did not constitute "discipline" in violation of the Act. LMRDA, Section 101(a)(5).

Back reference.—¶ 7477.

Rights of Union Members—Merger of Locals—Evidence of Bad Faith.—Where the evidence failed to establish that an international and its president acted in bad faith or adversely to the interests of the international and its membership as a whole in ordering a merger of locals in a particular area, federal labor law does not permit a court to substitute its own view of what is in the best interests of a labor organization for the decisions of the officers or bodies of that organization which are charged under the union constitution with the responsibility for making such decisions. LMRDA, Section 101.

Back reference.—¶ 7477.67.

Rights of Union Members—Internal Appeals Procedures—Stay Pending Appeal.—In effecting the merger of local unions and in refusing to grant a stay pending appeal under internal union appeal procedures, an international and its general president did not violate their contractual duties to a local under the international's constitution, and therefore, the local was not entitled to injunctive relief under the Act. The complaining members had demonstrated neither the irreparable harm nor the probability of success on the merits, which are prerequisites to the issuance of a preliminary injunction. LMRDA, Section 102.

Back reference.—¶ 7479.20.

Findings of Fact, Conclusions of Law and Order

Two separate cases, No. C-73-1829-CBR, referred to hereafter as the "Local 497 case," and No. C-73-1700-CBR, referred to hereafter as the "Local 75 case," were consolidated for hearing on the issue of an Order to Show Cause why a preliminary injunction should not issue.[1] In the Local 497 case a preliminary injunction was sought to restrain an international labor union, Sheet Metal Workers' International Association, AFL-CIO, referred to hereafter as the "International," from merging its affiliate Local 497 (with territorial jurisdiction over Del Norte, Humboldt, and Trinity Counties) into Local 104 of San Francisco. In the Local 75 case, similar relief was sought to restrain action of the International transferring members of another affiliate, Local 75, into Locals 104 of San Francisco and 216 of Oakland on the following basis:

(a) The members of Local 75 who reside in Mendocino, Lake, Sonoma, and Marin Counties to be transferred into Local 104, and

(b) The members of Local 75 who reside in Napa and Solano Counties to be transferred into Local 216.

This action has been brought under various sections of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act), 29 U. S. C. § 401 et seq.,

[1] By stipulation of the parties to the Local 75 action, dated September 25, 1973, a temporary restraining order was issued on that date to enjoin further dissolution of Local 75 and transfer of its members pending the Court's decision on plaintiffs' motion for a preliminary injunction. By stipulation and order dated January 21, 1974, the hearing on the preliminary injunction constituted the trial on the merits in both cases. As a result of this stipulation and order plaintiffs have effectively waived their claim for money damages since no evidence of such damage was presented at the hearing.

specifically the sections dealing with equal rights and free speech [§§ 411(a)(1) and (2)], due process in disciplinary proceedings [§ 411(a)(5)], and the fiduciary obligations owed to union members by their officers [§ 501]. In addition, there are allegations of the violation of the duty of fair representation enforceable under § 301 of the Labor-Management Relations Act of 1947 (Taft-Hartley Act), 29 U. S. C. § 185, and of violations of the union constitution enforceable by Local 75 under 29 U. S. C. § 185.

The cases came for hearing on December 3, 4, 5 and 6, 1973. Thereafter the parties filed proposed findings of fact and conclusions of law and plaintiffs filed a post-hearing brief. Oral argument was heard on January. 3, 1974. After hearing all of the witnesses and examining all of the evidence, the Court makes the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. Plaintiffs in the two actions which have been consolidated herein are members, respectively, of Local Unions 75 and 497 of the International. They are suing individually and on behalf of their fellow members as a class.

2. The members of Local 75 number approximately 470, and it is impracticable to bring all of them before the Court. There are questions of law and fact presented here which are common to the entire class of persons who are members of Local 75. The claims of plaintiffs herein are typical of the claims of this class, and the plaintiffs will fairly and adequately protect the interests of the class.

3. In the Local 75 action the defendants have acted on grounds generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

4. In the Local 75 action the class consists of the members of Local 75 of the International as of August 29, 1973.

5. The members of Local 497 number approximately 60, and it is impracticable to bring all of them before the Court. There are questions of law and fact presented here which are common to the entire class of persons who are members of Local 497. The claims of plaintiffs herein are typical of the claims of this class, and the plaintiffs will fairly and adequately protect the interests of the class.

6. In the Local 497 action the defendants have acted on grounds generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

7. In the Local 497 action the class consists of the members of Local 497 of the International as of August 29, 1973.

8. During the course of the proceedings, Local 75 of the International entered as an Intervenor.

9. Locals 497 and 75 are local unions chartered by and affiliated with the International.

10. Defendants are the International; Edward J. Carlough, the General President of the International; and Charles Artman, the International Representative having responsibility over Locals 75 and 497.

11. Defendant International is an international labor organization with general offices in Washington, D. C., with which are affiliated more than 400 subordinate bodies such as local unions, district councils, and railroad district councils throughout the United States and Canada. International issues charters to new local unions and other subordinate bodies from time to time and it also revokes charters, merges or amalgamates local unions, transfers members from one local union to another, and changes the territorial jurisdiction or the classification-of-work jurisdiction of its various local unions. In such activities and all other matters, the International, its affiliated local unions and other subordinate bodies, and the membership are governed by a written document known as the Constitution and Ritual of the International, which prescribes all of the reciprocal rights and duties of the parties and which may fairly be described as a contract or compact by and between them.

12. Defendant Edward J. Carlough, the International's General President, is its chief executive officer. Carlough has been General President since October 1, 1970. During the ten years prior to being General President, Carlough was the International's Director of Organization.

13. Defendant Charles Artman is an International Representative of the International. He has served in such capacity since 1954. An International Representative is appointed by the General President with the consent of the General Executive Council, and is a full-time, salaried position. Artman services the entire state of California in this capacity.

[*Division of Local*]

14. The acts complained of arose out of the decision of the General President to divide Local 75, covering much of California north of San Francisco, and to transfer those members currently residing in Mendocino, Lake, Sonoma, and Marin Counties to Local 104 in San Francisco and to transfer those members currently residing in Napa and Solano Counties to Local 216 in Alameda County; and, in addition, to merge Local 497, whose territorial jurisdiction covers Del Norte, Humboldt and Trinity Counties, into Local 104 in San Francisco.

15. Carlough explained this decision in a letter to the members affected dated August 29, 1973. He gave as authority for his action Article Three, Section 2(g) of the Constitution and Ritual of the International which provides in applicable part:

> "The General President shall have full authority • • • to amalgamate two or more local unions or district councils when it is advisable or necessary in the best interests of this Association and the members thereof."

16. The letter of August 29, 1973, enumerates six factors evaluated in reaching the decision to amalgamate the local unions along the lines specified: (1) Local 497 was unable to police its jurisdiction effectively despite its high dues structure; (2) increased operating efficiency along with lower administrative costs would result from the amalgamation of Locals 497 and 75; (3) the new geographic distribution of the transferred areas of Local 75 would enable the surviving Locals 104 and 216 to cover the expanded area with relative facility; (4) the elimination of various types of inter-local travel barriers would encourage Bay Area sheet metal contractors to bid on jobs over a broader area and would enable union contractors to compete more effectively with rival trades and nonunion employers, thus increasing work opportunities for the membership as a whole; (5) a better competitive basis, in jurisdictional terms, would result for sheet metal workers and contractors in relation to other rival trades and crafts in the Northern California area; and (6) the fact that Northern California was treated as a single economic area by federal wage and price administrators with uniform wage structures formulated for the entire area.

17. At trial Carlough further explained that his decision was based primarily on the following concerns:

(a) The existence of too much competition among the Northern California locals;

(b) The migration of sheet metal contractors down the Peninsula and away from San Francisco; and

(c) The desirability of the SASMI plan, which depended for its implementation on a freer flow of members in the Northern California area and which, therefore, was being inhibited by the then current jurisdictional structure of the Northern California locals.

18. The evidence indicates that from the time Carlough became General President and even prior thereto he had been considering the problems of sheet metal workers local unions in the Northern California area. The essential difficulty in Northern California, according to Carlough, is that there are too many local unions in the area and, thus, too much competition among them for more money in terms of hourly wage rates, pensions, and other fringe benefits, etc. There are five local unions competing in the Bay Area alone: Local 104 (San Francisco County), Local 216 (Alameda and Contra Costa Counties), Local 272 (San Mateo County), Local 209 (Monterey, San Benito, Santa Clara, and Santa Cruz Counties), and Local 75 (Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties). Whenever certain conditions were obtained in one area, the representatives of the local unions in contiguous areas attempted to surpass them. This, at least in Carlough's opinion, has had an adverse effect upon the development of the union sector of the sheet metal industry. In addition, the movement of men in the Northern California area has been restricted unduly under the International's so-called "two-man rule"[1] due to the fact that there are too many local unions in this region. This has contributed to the loss of certain kinds of work by union contractors and will continue to do so if the conditions continue. Many local unions in Northern California in comparable building trades work such as ironworkers, asbestos workers, and operating engineers, have territorial jurisdiction over substantially more of the Northern California counties than the sheet metal workers' local unions which means that there are relatively few restrictions on the move-

[1] Under the "two-man rule" a contractor from outside the jurisdiction of a particular local union can bring into that jurisdiction no more than two men from his home jurisdiction. He must hire the rest of his crew from the local within whose jurisdiction the job is located.

ment of the members of the other trades throughout the Bay Area. Carlough's testimony about unfavorable competitive conditions in the union sector of the sheet metal industry was independently corroborated by A. Bruce McKenzie, executive director of the Sheet Metal Contractors Association in San Francisco, Wade Adams, member of the board of directors of the Sheet Metal Contractors Association of San Mateo, and Richard Ward, executive director of the Sheet Metal Contractors Association of San Mateo. A letter from Richard Ward, dated September 7, 1972, indicated that a number of Bay Area sheet metal contractors intended to approach General President Carlough to seek the merger of all five Bay Area local unions into one local union, as a suggested solution to the problem.

[*Shrinkage in Local's Membership*]

19. Another development which Carlough deemed serious was the shrinkage in the size of the membership of Local 104 of San Francisco. This evidently was attributable to a migration of shops and work from San Francisco to contiguous areas. Carlough stated that the San Francisco local union must be maintained as the dominant-sized union in the Bay Area and that the logical way to achieve this objective was through a program of mergers.

20. The International, in conjunction with various employers, has established a trustee plan to stabilize the earnings of sheet metal workers by assuring covered employees a minimum number of hours of pay during semi-annual periods. The plan which is entitled Stabilization Agreement of the Sheet Metal Industry, and is commonly known as SASMI, was not completed in final form and formally adopted until May 21, 1973. General President Carlough has personally endorsed SASMI and has encouraged its adoption by local unions and employers throughout the country. Carlough spoke of the SASMI concept to various employer and union groups as early as March of 1971, long before the plan was completed in final form.

21. In the winter and spring of 1972, Carlough had a series of discussions of the SASMI concept with A. Bruce McKenzie, executive director of the Sheet Metal Contractors Association of San Francisco, and Charles Andrews, President of that Association. Carlough, who at that time was already considering various merger possibilities in the Bay Area, felt that McKenzie and Andrews, being interested in obtaining relief from the strictures on the free flow of manpower and diversity of wage rates and working conditions throughout the Bay Area, might be induced to support the SASMI concept in exchange for the contemplated mergers which would probably result in the desired relief. Thus, an agreement was negotiated on August 1, 1972, between Local 104 and the San Francisco Contractors Association, accompanied by a letter of understanding between Carlough and Andrews which provided that if certain types of relief could be obtained with respect to working conditions and travel restrictions in Locals 104, 272, 309 and 216, and if a common industrial agreement could be negotiated to apply throughout the jurisdiction of Locals 75, 104, 216 and 272 and 309, the San Francisco Sheet Metal Contractors would participate in the SASMI program.

22. Both the agreement and the letter of understanding of August 1, 1972, were revised and renegotiated by the original signatory parties on May 21, 1973, pursuant to recommendations by counsel for the International and also to conform to the final concept for the SASMI program, which had been substantially revised since August 1, 1972. The conditions described in the letter of understanding have not been met as of the date of the hearing herein, and the sheet metal contractors affiliated with the Sheet Metal Contractors Association of San Francisco are not making contributions to the SASMI trust fund or participating in the SASMI program.

23. During 1973 the SASMI plan has been repudiated by a substantial number of locals throughout the United States, including Local 75. Most of the local unions in the State of California which have negotiated agreements during 1973 have rejected it. Carlough told Kelley Barber, the business manager of Local 75, that he was disappointed to learn that Local 75 had not adopted SASMI and stated that he felt that with proper leadership, Local 75 would have endorsed it.

[*Merger of Unions*]

24. Between 1966 and 1972 a considerable number of local unions throughout the United States and Canada have been merged or amalgamated with other local unions, and during the same period of time many changes in the territorial jurisdiction of local unions have been directed, some of which repre-

sented accretions and others diminutions to the affected local unions.

25. Plaintiffs did not establish by a preponderance of the evidence that Carlough ordered the amalgamation for the purpose of punishing Local 75 or its members for their rejection of the SASMI plan or for the purpose of punishing the members of Local 497.

26. Plaintiffs did not establish by a preponderance of the evidence that, in ordering and effecting the amalgamation, either Carlough or Artman acted in bad faith or in conflict with or adversely to the interests of the International or of its members collectively.

27. In light of the conditions existing in Northern California in May, 1972, General President Carlough asked International Representative Artman for his recommendations with respect to mergers involving the various local unions in Northern California. Artman prepared a study which recommended the mergers of: (1) Locals 104, 272 and 309, (2) Locals 216, 283 and 595, and (3) Locals 75 and 497. Artman also recommended the creation of a Bay Area "Indusdustrial Local" to have jurisdiction over industrial sheet metal work in the entire Bay Area. He recommended against the merger of Local 75 into Local 104 or Local 216.

28. Carlough then began working with the officials and members involved for the merger of Locals 104, 272, and 309, as recommended, but, because of opposition from the locals and from the employer associations concerned, he was eventually forced to abandon these efforts.

29. Carlough then turned his attention to Locals 75 and 497 and decided, contrary to the earlier recommendation of Artman, to transfer their members into Locals 104 and 216. He restudied and rejected Artman's recommendations as to a merger between Locals 75 and 497.

30. In order to avoid the problems he had encountered earlier in his attempt to merge Locals 104, 272 and 309, Carlough decided not to disclose his intentions to the officials or members of Locals 75 and 497.

31. Artman, together with counsel for the International made a feasibility study of the merger prospects for Locals 497 and 75 which was submitted in the form of a written report in July of 1973. This report, with minor changes, served as the basis for Carlough's merger directive of August 29, 1973.

32. Carlough thereupon issued his letter of August 29, 1973, which directed that the necessary details of the mergers were to be completed no later than October 1, 1973. Artman told the members of Local 75, however, that the mergers were effective as of August 29, 1973. Artman then canceled the regular meeting of the membership, scheduling in its place two purely informative meetings; and, when presented with a petition by the membership for a special meeting, as permitted under the Constitution, he refused to allow such a meeting to be held.

33. With respect to the merger of Local 497 (Trinity, Humboldt and Del Norte Counties), every witness who testified at the hearing herein conceded that a merger was not only desirable but necessary inasmuch as Local 497 was unable to sustain itself despite high dues structure. International Representative Artman testified that the members of Local 497, with the possible exception of one or two individuals, have already been transferred into Local 104, so that this merger is in effect a *fait accompli*.

34. The merger or transfer of members in the Local 75 case is only partially completed because of the issuance by this Court upon stipulation of the parties of a temporary restraining order which by consent of counsel for defendants has been continued until the court enters its order herein on plaintiffs' motion for a preliminary injunction.

35. The directive of August 29, 1973, enlarges the territorial jurisdiction of Local 104 of San Francisco northward in a narrow corridor to the southern border of Oregon, embracing the counties of San Francisco, Marin, Sonoma, Lake, Mendocino, Trinity, Humboldt, and Del Norte, and enlarges the territorial jurisdiction of Local 216 of Oakland to include Alameda, Contra Costa, Napa, and Solano Counties. Many other building trades local unions have comparable or even more extensive territorial jurisdiction.

[Effect of Merger]

36. This merger, just as any other, has the natural effect of diluting the rights and powers of individual members of the locals involved.

37. Pursuant to President Carlough's directive of August 29, 1973, the members

union. In the event the funds and property are not surrendered to a local union by the General Secretary-Treasurer as provided in this Section, they shall become the property of this Association."

44. Appeals have been filed with the General Executive Council, which has the constitutional authority to modify or reverse and set aside the action of the General President should it decide that said mergers or either of them are not in the best interests of the International and the members thereof. Should the General President's decision be reversed, the charter, seal, books, records, papers, funds and all other personal property of both or either of said local unions would be returned by the International's General Secretary-Treasurer, pursuant to the provisions of Article Ten (10), Section 10, of the International Constitution.

[Waiver of Requirement]

45. Plaintiffs have requested waiver of the requirement under Article Nineteen (19), Section 5(a) of the International Constitution of compliance with the merger decision pending the appeal. Pursuant to Article Nineteen (19), Section 5(b), General Secretary-Treasurer Turner polled the members of the General Executive Council to ascertain whether they favored waiver of such requirement. The members of the General Executive Council notified the General Secretary-Treasurer that they did not wish to grant such waiver.

46. In the event that plaintiffs are successful on their internal appeals, the International could re-establish the locals, and so long as the International adheres to the above safeguard provisions involving the books, records, funds, etc., of the locals during the pendency of the appeal, plaintiffs will not suffer irreparable harm because of the consummation of the merger.

47. Plaintiffs have not been denied their right of internal appeal under the International Constitution nor have defendants frustrated that right.

Conclusions of Law

1. Jurisdiction and venue are proper under 29 U. S. C. §§ 412, 501, and 185.

2. Both the Local 75 action and the Local 497 action are properly maintained as class actions under Rule 23(b)(2), Federal Rules of Civil Procedure.

3. The safeguards enacted in the Landrum-Griffin Act were meant to secure individual membership rights, not to guarantee the perpetuity of a given local union.

4. In taking the actions complained of here, defendants did not deny to plaintiffs their right to participate equally in union affairs and, therefore, did not violate 29 U. S. C. § 411(a)(1).

5. Defendants' actions did not deny to plaintiffs their right of free speech and assembly and, therefore, did not violate 29 U. S. C. § 411(a)(2).

6. In light of the safeguards provided to protect fully the political and the contractual rights of the transferred members and in the absence of proof establishing an intent on the part of defendants to punish the locals in question, the mere diminution of voting strength resulting from the transfers does not constitute "discipline" in violation of 29 U. S. C. § 411(a)(5).

7. Defendants have not violated the fiduciary duties imposed upon them by 29 U. S. C. § 501.

8. Defendants have not violated the duty of fair representation enforceable under 29 U. S. C. § 185 (§ 301 of the Taft-Hartley Act).

9. Where the evidence fails to establish that defendants acted in bad faith or adversely to the interests of the International and its membership as a whole, federal labor law does not permit a court to substitute its own view of what is in the best interests of a labor organization for the decisions of the officers or bodies of that organization which are charged under the union constitution with the responsibility for making such decisions.

10. Carlough's action in ordering the amalgamation in question was proper under the terms of the Constitution and Ritual of the International.

11. The Constitution of the International does not require the International or its General President to disclose merger or amalgamation plans to the locals affected prior to the institution of such plans.

12. In effecting the amalgamation and in refusing to grant a stay pending internal appeal, defendants have not violated the contractual duties to plaintiff Local 75 which arise under the International Constitution, and therefore, plaintiff Local 75 is not entitled to relief under 29 U. S. C. § 185.

13. Plaintiffs have demonstrated neither the irreparable harm nor the probability of success on the merits which are prerequi-

sites to the issuance of a preliminary injunction.

Therefore, on the basis of the foregoing Findings of Fact and Conclusions of Law,

It Is Hereby Ordered that plaintiffs' motion for a preliminary injunction is denied.

It Is Hereby Further Ordered, Adjudged and Decreed that the complaints of plaintiffs are dismissed, and that judgment be entered in favor of defendants.

It Is Hereby Further Ordered, Adjudged and Decreed that the parties are to bear their respective costs.

It Is Hereby Further Ordered, Adjudged and Decreed that defendants submit a form of judgment consistent with this order.

[¶ 10,314] Local 370, Retail, Wholesale, Department Store Union, AFL-CIO, Plaintiff v. The Creme Cone Manufacturing Company, Division of Big Drum, Inc., Defendant.

Ohio Court of Common Pleas, Franklin County. No. 73CV-06-2061. February 25, 1974.

Suits Under Union Contracts

Arbitration Awards—Modification of Contract—Exclusion of Programmer from Contractual Bargaining Unit.—An arbitrator's award declaring that a programmer was not part of a bargaining unit was vacated, since the bargaining contract specifically stated that occupations in the bargaining unit, as the programmer was, were not to be removed from the unit and the contract prohibited the arbitrator from modifying the terms of the contract. Ohio Revised Code, Section 2711.10.

Back references.—¶ 3280.24 and Ohio ¶ 43,555.

David Clayman, Columbus, Ohio, for Plaintiff.

Joseph M. Millious and Timothy J. Battaglia, Columbus, Ohio, for Defendant.

Decision and Entry

FLOWERS, J.: The within case comes on for determination of the separate motions for summary judgment filed by both parties upon the pleadings, exhibits and memoranda of counsel. The complaint seeks the vacation of an arbitrator's award, pursuant to Section 2711.10, Ohio Revised Code, on the basis that the arbitrator exceeded his authority in ruling that the occupation of a programmer was not a bargaining unit occupation contrary to the specific limitations of the Collective Bargaining Agreement, Exhibit 1. Upon consideration thereof, the Court finds that there is no genuine issue as to any material fact with respect to plaintiff's Application to Vacate the Arbitrator's Award, and that plaintiff is entitled to judgment as a matter of law on its Motion for Summary Judgment.

[*Modification of Contract*]

The history of the position under consideration and necessity for economic development, as enunciated by the arbitrator, certainly justifies his conclusion. However, his determination does constitute a *modification* of the collective bargaining agreement rather than an *interpretation* thereof, contrary to its specific limitations.

Article II, Section 3 provides as follows:

"Occupation presently in the bargaining Unit will not be moved to another Division or Department within the Company, outside of the Bargaining Unit."

Article VI, Section 2 contains the limitation that the arbitrator shall not have the power to add to or subtract from or modify any of the terms of said agreement. This latter limitation is consistent with both federal and state case law, cited by plaintiff. Economic justifications do not warrant departure from the specific limitations of the agreement.

Accordingly, the motion of plaintiff for summary judgment is well taken and is sustained. Motion of defendant for summary judgment is not well taken and is overruled.

It is, therefore, ordered, adjudged and decreed that final judgment be rendered in favor of plaintiff at the costs of defendant.

A-49

UNITED STATES OF AMERICA

BEFORE THE NATIONAL MEDIATION BOARD

TO THE NATIONAL MEDIATION BOARD:

APPLICATION TO INVOKE SERVICES OF THE NATIONAL MEDIATION BOARD

Come now applicants and in connection with this Application show the Board the following facts:

1.

Your applicants are Matthew Jasinski, Max R. Skelton, Charles K. Johnson, J. Stewart Harrison, Edward E. Browik, J. W. Roach, Don Goodhart, Phillip Beaulieu, and John R. Thomas, all of whom are airline mechanics employed by Eastern Airlines, Inc. Applicants bring this Application for themselves individually and for all of the other airline mechanics and other related employees in their existing collective bargaining craft and unit under the Railway Labor Act (herein, the Act), as amended.

2.

Applicants, along with their fellow employees in their said collective bargaining craft and unit are employees within the meaning of the Act.

3.

Eastern Airlines is an airline carrier within the meaning of the Act.

4.

Applicants are presently represented for collective bargaining purposes under the Act by International Association of Machinists and Aerospace Workers Union (herein, I.A.M.), which is a labor organization within the meaning of the Act.

5.

Applicants are employed as airline mechanics in the collective bargaining unit which was last determined by the Board, itself, in the proceeding designated as R-3639. The Board in that specified proceeding determined that applicants' appropriate bargaining unit consisted of those airline mechanics, specialists, their helpers and apprentices that had been certified by the Board in case numbers R-407 and R-576, and the shop laborers and janitors that had been added by the Board in case number R-1976; and additionally, some of Eastern's fleet service employees who perform ground service and cleaning functions a preponderance of their time.

The Board, there, expressly excluded from applicants bargaining craft and unit: Eastern's fleet service employees who worked mostly in cargo and baggage handling; the separate unit of Eastern's stock (store) personnel; and the separate unit of Eastern's print shop employees.

6.

A subsequent proceeding designated R-3712 resulted in a recommendation by an impermanent and rather unusual neutral committee to expand applicants' airline mechanics unit as last determined by the Board in case number R-3639 referred to in Paragraph 5 above. This ill advised recommendation by that neutral committee would have expanded applicants' statutory bargaining unit to include the great number of Eastern's fleet service employees who work mostly as cargo and baggage handlers.

However, insofar as applicants have been able to determine, this ill advised recommendation by this neutral committee was never formally acted upon nor certified by the Board; and as a result, the Board's last official determination of applicants' bargaining unit is found in the aforesaid case number R-3639, which specifically excluded the great number of fleet service employees performing primarily the work of cargo and baggage handlers.

7.

Notwithstanding that Eastern's airline mechanics and related employees are entitled under the acts guarantee of their right to organize and bargain as a craft of employees for collective bargaining purposes, I. A. M. and Eastern have for a number of years violated the integrity of applicants' aforesaid bargaining unit of airline mechanics and related employees, by in effect ignoring applicants' craft and bargaining unit status, and unilaterally including for all collective bargaining purposes applicants' said craft and bargaining unit of airline mechanics or employees in one big communalized and indiscriminate class of employees; including not only applicants' said unit, but the separate bargaining unit of Eastern's stock (store) clerks, and the separate bargaining unit of Eastern's print shop employees, and the separate bargaining unit of Eastern's fleet service employees performing mostly cargo and baggage handling work and other various and sundry employees.

8.

As a result of this aforesaid improper communalization or amalgamation of applicants' collective bargaining craft and unit by Eastern and I. A. M., applicants, and those similarly situated members of applicants' collective bargaining craft and unit have been deprived of their right under the Act to organize and bargain as such collectively, and to determine who should be the representative of their collective bargaining craft and unit for purposes of the Act.

9.

And, as a further result of this said communalization or amalgamation of applicants' said collective bargaining craft and unit, by Eastern and I.A.M., applicants are deprived of any effective voice in the exercise of their rights guaranteed by the Act with respect to collective bargaining and with respect to their hours, wages and other terms and conditions of employment, all in violation of the requirements of the Act.

10.

Applicants show that while they protest this aforesaid communalization or amalgamation of their collective bargaining craft and unit, they do not seek to disturb the representation of their bargaining craft and unit by I.A.M., nor the representation of any other appropriate craft or class of Eastern's employees by I.A.M.; for applicants seek solely to have the Board exercise its statutory power and duty to preserve the integrity of applicants' collective bargaining craft and unit, by requiring Eastern and I.A.M. to cease and desist from unlawfully communalizing or amalgamating applicants' collective bargaining craft and unit with other separate collective bargaining crafts or classes of Eastern's employees in derogation of the policies of the Act.

11.

Applicants show that the last collective bargaining contract between Eastern and I.A.M. covering applicants and other members of their collective bargaining craft and unit expired on August 31, 1973, and there currently is no collective bargaining contract in existence governing applicants' collective bargaining unit.

12.

Applicants show that this wrongful amalgamation and communalization of Eastern's employees by Eastern and I.A.M. is adversely affecting approximately 4,500 airline mechanic and related employees,

approximately 4,500 fleet service employees, approximately 500 stock (store) personnel, approximately 25 printing shop employees.

13.

Applicants show that this said unlawful communalization and amalgamation of these aforesaid separate collective bargaining crafts and classes of employees and their respective collective bargaining units, by Eastern and I.A.M., is in flagrant violation of the Board's prior unit determinations, and of the Board's memorandum dated August 25, 1972 and entitled: "AIRLINE INDUSTRY HEARINGS (SEPTEMBER 15, 1970-OCTOBER 7, 1971) REGARDING THE CONTEMPORARY APPROPRIATENESS OF THE PRESENT CRAFT OR CLASS OF CLERICAL, OFFICE, FLEET AND PASSENGER SERVICE EMPLOYEES AS SET FORTH IN CASE NUMBERS R-1706, ET AL, IN EFFECTUATION OF THE PURPOSES OF THE RAILWAY LABOR ACT."

WHEREFORE, applicants pray that the Board's services be invoked to determine the following matters:

(a) Whether the practices of Eastern and I.A.M. in carrying on their collective bargaining relationship have unlawfully violated the Board's prior collective bargaining unit determinations with respect to the crafts and classes of Eastern's airline mechanics and related employees, fleet service employees, stock (store) employees, and printing shop employees; and

(b) Whether applicants' right under the Act to organize and bargain collectively as an appropriate craft and unit through representatives of their own choice, and applicants' right to have the majority of their appropriate craft and unit to effectively assert their voice in such matters, have been unlawfully violated by Eastern in concert with I.A.M.; by means of the unlawful and

improper communalization and amalgamation of the separate collective bargaining craft and unit consisting of Eastern Airline mechanics and related employees, with other separate collective bargaining classes and units of Eastern's employees; and

(c) To determine such other related matters as may be deemed proper and necessary in the premises.

Respectfully submitted,

APPLICANTS:

By Matthew Jasinski
MATTHEW JASINSKI, for himself individually and for all other named Applicants and for all other of Applicants' co-employees who are similarly situated.

CERTIFICATE OF SERVICE

I, the undersigned counsel for Applicants in the within and foregoing application, do hereby affirm that I have this day served a true and correct copy of the within and foregoing Application upon Eastern Airlines, the carrier, and upon International Association of Machinists and Aerospace Workers Union, the labor organization, by depositing the same in the United States mail properly addressed and with sufficient postage affixed thereto.

This 28th day of February, 1974.

TOM CARTER

... LINES INCORPORATED / INTERNATIONAL AIRPORT / MIAMI, FLORIDA 33148 / 305-873-6975

STAFF VICE PRESIDENT
INDUSTRIAL RELATIONS

March 18, 1974

Mr. Rowland K. Quinn, Jr.
Executive Secretary
National Mediation Board
Washington, D. C. 20572

Dear Mr. Quinn:

By your letter of March 8, 1974, you requested comments regarding an application for Board services filed by Mr. Tom Carter.

Eastern Airlines has not violated any of the Board's determinations regarding appropriate bargaining units on this carrier and believes that the application filed by Mr. Carter should be dismissed. There has been no expansion of the classifications covered by the agreement since 1946, except for the addition of three small groups: Shop Laborers in 1950, Print Shop employees in 1952, and Ground Communications and Flight Simulator Technicians in 1958.

We consider the denial of the Aircraft Mechanics Fraternal Association's request for establishment of a separate craft or class of Aircraft Mechanic in Case No. R-3712 to have been a determination by the National Mediation Board acting through a duly authorized committee.

Eastern is required by law to continue to apply the terms and conditions of the agreement with the International Association of Machinists signed September 22, 1972 until the provisions of the Railway Labor Act have been exhausted by the Board closing its Case No. A-9464 in which mediation services are now pending.

As indicated above, the Board's dismissal of the application filed by Mr. Carter would seem to be in order.

Sincerely,

John P. Mead

John P. Mead

A-57

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

April 5, 1974

Mr. Floyd E. Smith, Int'l President
International Association of Machinists
& Aerospace Workers, AFL-CIO
1300 Connecticut Avenue, N. W.
Washington, DC 20036

Re: Airline Mechanics Association

Dear Mr. Smith:

This has reference to the application of the Airline Mechanics Association to invoke the services of the National Mediation Board in a matter involving Eastern Airlines.

On March 14, 1974, I requested your comments regarding this matter. To date I have not received comments from the International Association of Machinists and Aerospace Workers, however, I have received comments from Eastern Airlines in a letter dated March 18, 1974, copy of which I am providing to you and Mr. Thomas L. Carter, Counsel for the Airline Mechanics Association.

Upon receipt of your comments, the National Mediation Board will be prepared to determine whether it has jurisdiction to act upon the application of the Airline Mechanics Association.

Very truly yours,

Rowland K. Quinn, Jr.
Executive Secretary

cc-to: Mr. Thomas L. Carter
Suite 1726
Fulton National Bank Building
55 Marietta Street, N. W.
Atlanta, GA 30303

Mr. John P. Mead
Staff Vice President-Industrial Relations
Eastern Airlines, Inc.

49-Eastern

April 12, 1974

Mr. Rowland K. Quinn, Jr.
Executive Secretary
National Mediation Board
1230 - 16th Street, N. W.
Washington, D. C. 20572

Dear Mr. Quinn:

This will acknowledge receipt of your letter of April 5 with the enclosure of the comments of the carrier concerning the Airline Mechanics Association Application.

We agree with the carrier that the application should be dismissed for the same reasons lucidly expressed by it.

Very truly yours,

Floyd E. Smith
INTERNATIONAL PRESIDENT

s/bew/PAP

cc: Waldner, GLR
Cates, Ben Chan, DL 100

A-59

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

July 15, 1974
File No. C-4294

Mr. Thomas Linton Carter, Jr.
Suite 1726
Fulton National Bank Building
55 Marietta Street, N. W.
Atlanta, GA 30303

Pappa
Brown
Carter
7/16/74

4/9 Eastern

Dear Mr. Carter:

This has reference to the exchange of correspondence generated by your letter of February 28, 1974, attaching an application to invoke the services of the National Mediation Board which you captioned as involving "Dispute-Violation of Eastern and IAM of the collective bargaining craft and unit of Eastern's airline mechanics and related employees; and deprivation of the statutory organizational and craft rights of Applicants and their fellow employees under the Railway Labor Act, as amended." The National Mediation Board has circulated your application to the Union and Carrier involved soliciting their comments.

Comments of the Carrier were received on March 18, 1974, and transmitted to you on April 5, 1974. The IAM, on April 12, 1974, indicated that it agreed with the Carrier's position in this matter and that the application should be dismissed for the same reasons expressed by the Carrier. Unfortunately, the letter of the IAM dated April 12, 1974, was not sent to you before this date (copy now enclosed).

In reviewing your application for the Board's services, it does not appear that there is an allegation of the existence of a representation dispute as described in Section 2, Ninth of the Railway Labor Act. Additionally, there is no allegation that the certified representative and the Carrier are at a bargaining impasse concerning the matters contained in your application, and thus an invocation for the Board's mediatory services is not appropriate.

The National Mediation Board does not have jurisdiction to determine the manner in which a carrier and a union, certified for one or more crafts or classes, bargain, and thus the questions which you raise are not properly resolved by the National Mediation Board, but may be more effectively resolved by direct conferences between the affected parties.

Since there is no jurisdictional basis for the processing of your application in its present context, that is, failure to allege and demonstrate the existence of a representation dispute, the application is dismissed.

Very truly yours,

Rowland K. Quinn, Jr.
Executive Secretary

cc-to: Mr. John P. Mead
Staff Vice President-Industrial Relations
Eastern Airlines, Inc.
Miami International Airport
Miami, FL 33148

Mr. Floyd E. Smith, Int'l President
International Association of Machinists
& Aerospace Workers, AFL-CIO
1300 Connecticut Avenue, N. W.
Washington, DC 20036

A-61

FILED IN CLERK'S OFFICE

OCT - 2 1974

BEN H. CARTER, CLERK
By Jmie
DEPUTY CLERK

1-1580

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION, FILE NO. C74-1780A

MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M. E. URRA, J. STEWART HARRISON, JOHN W. ROACH, JR., and CHARLES K. JOHNSON,

Plaintiffs,

VS.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,

Defendant.

COMPLAINT

COUNT ONE

1.

(a) Defendant International Association of Machinists and Aerospace Workers (herein, IAM) is an unincorporated multi-state labor union having its principal offices and place of doing business located at Machinists Building, 1300 Connecticut Avenue, N. W., Washington, D. C. 20036.

(b) Defendant IAM regularly carries on the business for which it was formed within the territorial jurisdiction of this District Court through its managing and general authorized agents and official members in Fulton County, Cobb County, DeKalb County, Clayton County, and elsewhere within the territorial jurisdiction of this District Court for the Northern District of Georgia, Atlanta Division.

(c) Defendant IAM has at all material times, operated and maintained its chartered branch and local subordinate bodies within the territorial jurisdiction of this District Court for the Northern District of Georgia, Atlanta Division, which are known and designated as follows:

(1) LOCAL LODGE 1690, IAM, located at 4362 Thurmond Road, Forest Park, Georgia, and IAM'S authorized official member and general managing agent for this Local Lodge of defendant IAM is, for purposes of legal service of process, Ronnie Kilpatrick, President.

(2) DISTRICT LODGE #46, IAM, located at 157 Forsyth Street, S. W., Atlanta, Fulton County, Georgia; and IAM's general managing agent and official member of this District Lodge of IAM, for purposes of legal service of this Court's process is Bob Hall, Business Agent.

(3) Defendant IAM maintains other local branches and subordinate local bodies within the territorial jurisdiction of this Court; however, there is no necessity to name those other local subordinate bodies by defendant IAM for present purposes.

(d) Additionally, defendant IAM maintains a regional or divisional office and staff in the territorial jurisdiction of this District Court for the Northern District of Georgia, Atlanta Division, which is located at 120 Marietta Street, N. W., Atlanta, Fulton County, Georgia; and defendant's general managing agent and official member for purposes of legal service of this Court's process at this said location is Mr. H. C. Summers, whose title is Grand Lodge Regional Manager, IAM.

(e) Defendant IAM, by its acts and conduct by and through its agents and representatives has committed unlawful and torturous acts and omissions to act in Fulton County, Cobb County, DeKalb County, and Clayton County, Georgia, and within the territorial jurisdiction of this District Court for the Northern District of Georgia, Atlanta Division.

(f) The defendant IAM regularly solicits business, and engages in business and other persistant courses of conduct in carrying on its business for which it was formed, and derives substantial revenues from services rendered, all within this aforesaid geographic area in Georgia, and in this Court's territorial jurisdiction.

(g) SERVICE OF PROCESS upon defendant IAM is therefore requested to be perfected under Section 3-119 of the Georgia Code, as amended, by serving the aforesaid general managing agents and officers and official members of defendant IAM and its respective subordinate local branches and bodies as specified in subparagraphs 1 (c) (1) and 1 (c) (2) above.

(h) Additional SERVICE OF PROCESS, on defendant IAM is requested by service upon its general managing agent, official member, and Regional Manager, Mr. H. C. Summers, who is further identified in subparagraph 1 (d) above.

(i) Additional SERVICE OF PROCESS upon defendant IAM, is requested under this State's LONG ARM STATUTE, Section 24-113.1 of the Georgia Code, as amended; by serving the International President and general officer and managing agent and official member of defendant IAM, Mr. Floyd E. Smith, at the principal offices of defendant IAM located in the Machinists Building, 1300 Connecticut Avenue, N. W., Washington, D.C. 20036; by forwarding a second original of this Complaint along with the Court's process to the Marshal of the Federal District wherein this said address is situated with directions for that Marshal to perfect personal service upon the said Mr. Floyd E. Smith, as provided by law.

2.

The subject matter and controversy in this proceeding arises under the Federal RAILWAY LABOR ACT 45 U. S. Code Annotated Section 151, et seq. (herein the Act, or the Railway Labor Act); and the matter in controversy exceeds the sum or value of Ten Thousand Dollars, exclusive of interest and costs.

Thus, this Court has original jurisdiction of this proceeding under Section 1331 of Title 28 of the United States Code, as amended.

3.

Defendant IAM is a representative and labor union within the meaning of the Act.

4.

Plaintiffs are similarly situated and are employees within the meaning of the Act. And, plaintiffs are members of defendant.

5.

Eastern Airlines is, and at all material times has been, the employer of plaintiffs, and an air carrier within the meaning of the Act.

6.

The National Mediation Board (herein, the Board) is the admini-trative agency, created by the Act, and empowered by the Act to certify a craft or class of employees as an appropriate collective bargaining unit, and to certify a duly selected labor organization as the exclusive collective bargaining representative of such certified craft or class of employees.

7.

Plaintiffs are employed as airline mechanics in the statutory craft and collective bargaining unit which was last determined and certified by the Board, itself, in the proceeding before the Board designated as Case No. R-3639. The Board in that specified proceeding certified that plaintiffs' appropriate bargaining unit consisted of those airline mechanics, specialists, their helpers and apprentices; which had been certified previously by the Board in Case Nos. R-407 and R-576; and including the fringe group of shop

laborers and janitors that had been added by the Board in Case No. R-1976; and additionally, a fringe group of Eastern's employees who performed ground service and cleaning functions a preponderance of their time. (This certification is herein, referred to as PLAINTIFFS' UNIT, or PLAINTIFFS' CRAFT).

The Board, there, EXPRESSLY EXCLUDED from plaintiffs' bargaining craft and unit the following groups of Eastern's employees: Eastern's employees who worked mostly in CARGO AND BAGGAGE HANDLING; and the separate unit of EASTERN'S STOCK (STORE) PERSONNEL; and the separate unit of Eastern's PRINT SHOP EMPLOYEES.

8.

There has been no subsequent certification by the Board, itself, subsequent to this aforesaid certification in R-3039, to include in plaintiff's unit Eastern's said cargo and baggage handling employees, or stock (store) personnel, or print shop employees.

9.

Defendant IAM is, and at all material times, has been the labor organization certified by the Board, under the Act, to represent plaintiffs for purposes of collective bargaining.

10.

Defendant IAM has not been certified by the Board to include in plaintiffs' said certified unit those employees who have been previously expressly excluded from the Board's prior certifications of plaintiffs' unit and craft.

11.

Nevertheless, defendant, in conjunction with plaintiffs' employer, Eastern Airlines, has for a number of years violated the integrity of plaintiffs'

aforesaid certified unit by wrongfully ignoring plaintiffs' craft and unit status, and unilaterally unlawfully absorbing for all collective bargaining purposes plaintiffs' said certified craft and unit into one big communalized and heterogeneous class and uncertified bargaining unit of employees; including not only plaintiffs' said unit, but the separate bargaining unit of Eastern's stock (store) clerks, and the separate bargaining unit of Eastern's print shop employees, and the separate bargaining unit of Eastern's employees performing mostly cargo and baggage handling work and other various and sundry employees.

12.

By reason of this wrongful communalization of all of Eastern's said employees into one big communalized class and uncertified collective bargaining unit, numerous othermembers of defendant, and employees of Eastern, who are in no way included in plaintiffs' certified statutory craft and bargaining unit under the Act, have been given a prevailing and majority voice in all those pertinent aspects and processes of collective bargaining that directly govern the primary employmental interests and careers of plaintiffs as airline mechanics in plaintiffs' certified craft and unit.

13.

By reason of defendant's said wrongful communalization and absorption of plaintiffs' certified statutory craft and unit, plaintiffs and the other members of their statutory craft and unit have been deprived of any meaningful and effective voice in their craft and unit collective bargaining matters; and plaintiffs and their statutory craft and unit have been deprived of their right to organize and bargain collectively as a craft through their chosen collective bargaining representative, guaranteed by the Act.

14.

Defendant, by its aforesaid acts and conduct herein complained of, has thus violated plaintiffs' statutory rights guaranteed by the Act: and

defendant has thereby violated its duties and obligations owed to plaintiffs, and to plaintiffs' certified statutory craft and unit as certified by the Board, under the Act.

15.

As a direct result of these specified violations of law by defendant, plaintiffs, as members of their certified statutory craft and unit, have been damaged by loss of remuneration and other economic benefits of their employment respectively, in the minimum amount of Fifteen Thousand Dollars each.

16.

A direct result and consequence of this said wrongful communalization by defendant of plaintiffs' statutory craft and unit has been the loss of a majority and effective voice by plaintiffs and the other members of plaintiffs' craft and unit in respect to their wages, hours, and other terms and conditions of employment, and in respect to all facets of the ongoing process of collective bargaining; by reason of the fact that the members of plaintiffs' statutory craft and unit constitute a numerical minority of the aforesaid uncertified overall communalized and heterogeneous collective bargaining class of Eastern's employees, wrongfully established by defendant.

To illustrate, defendant permits those Eastern employees, and members of defendant, who are excluded from plaintiffs' said certified statutory craft and unit, and who constitute a majority of the said communalized bargaining class, to vote upon, and to determine, in the ongoing process of collective bargaining, all of the wages, hours, and other terms and conditions of plaintiffs, and all other matters and facets of the ongoing process of collective bargaining, as they pertain to, and govern, plaintiffs and the other members of plaintiffs' said certified statutory craft and unit, all in violation of the policies and provisions of the Act.

17.

Defendant has engaged in the aforesaid wrongful acts and conduct, in violation of the Act, notwithstanding the repeated requests and protests by plaintiffs, and other members of their certified statutory craft and unit.

18.

Defendant has engaged in these said unlawful acts as a means and scheme to further its own economic benefit, at the expense of the members of plaintiffs' certified statutory craft and unit; by thereby organizing Eastern's other various and sundry dues paying classes of employees; through resort to the compulsory union shop and dues check-off contract provisions sanctioned by the Railway Labor Act.

19.

In addition to their economic losses and damages specified above, plaintiffs have suffered, and will continue to suffer, INCALCULABLE AND IRREPARABLE INJURY and damage in their very valuable employmental rights, interests, and careers as airline mechanics, if defendant is allowed to continue its aforesaid unlawful denial of plaintiffs' statutory rights to be represented in collective bargaining as members of their own lawfully certified craft and bargaining unit, and through defendant's said denial of a meaningful and effective voice to plaintiffs and the other members of plaintiffs' craft and unit, in matters pertaining to their representation in collective bargaining.

Accordingly, plaintiffs are entitled to INJUNCTIVE RELIEF against the trial of this matter enjoining defendants, its officers, agents, representatives, and all other persons, firms, corporations and associations acting in concert with defendant, from continuing these said unlawful acts.

20.

These said unlawful acts and conduct by defendant were done knowingly, wantonly by defendant, and out of open, invidious, and intentional hostility towards plaintiffs and plaintiffs' statutory craft and unit, and with intent to injure plaintiffs, and to the end of defendant's own benefit and gain.

And thus plaintiffs are entitled to an award of exemplary damages against defendant in the amount of One Million Dollars.

COUNT TWO

Plaintiffs' claims set forth in this COUNT TWO of this Complaint establish that defendant has violated its lawful obligation and duty of fair representation owed to plaintiffs as their statutory exclusive collective bargaining representative, by engaging in hostile and invidious discrimination against plaintiffs and plaintiffs' craft and unit in its representation in collective bargaining, under the Act, and in this respect the plaintiffs show the following:

21.

Paragraphs 1 through 20 in COUNT ONE of this Complaint are referred to and incorporated hereat by reference as part of this COUNT TWO.

22.

Defendant's said wrongful acts against plaintiffs and plaintiff's certified statutory craft and unit; And defendant's resulting denial of plaintiffs' lawful right to be represented in collective bargaining under the Act as a certified statutory craft and unit; And defendant's said denial of plaintiffs' meaningful and effective voice in matters pertaining to their representation in collective bargaining, as aforesaid, were done knowingly by defendant, notwithstanding the repeated requests and protests by plaintiffs and other members of plaintiffs' said certified statutory craft and unit, and out of open and invidious hostility towards, and

culpable neglect of, plaintiffs and plaintiffs' said certified statutory craft; and defendant's said actions constitute unlawful discrimination against, and unfair representation of, plaintiffs and plaintiffs' said certified statutory craft, all in violation of the obligations of defendant under the Act.

WHEREFORE, based upon the foregoing, plaintiffs jointly and singularly pray for the following relief:

1. That this Court's process issue, and be served upon defendant, as required by law, requiring defendant to appear and offer its defenses in this proceeding;

2. That each plaintiff have judgment against defendant in the amount of FIFTEEN THOUSAND ($15,000.00) DOLLARS for his respective general damages, suffered by reason of defendant's specified unlawful acts and conduct against plaintiffs; and

3. That plaintiffs be granted injunctive relief against defendant, requiring defendants to cease and desist from engaging in, and continuing defendant's alleged unlawful acts and conduct against plaintiffs, in order to avoid irreparable injury and harm to plaintiffs and their careers; and

4. That plaintiffs be awarded EXEMPLARY damages in the total sum of ONE MILLION ($1,000,000.00) DOLLARS, with plaintiffs to share equally therein; and

5. That plaintiffs have judgment against defendant jointly in the sum of TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS as plaintiffs' reasonable attorney's fees incurred in connection with this proceeding; and

6. That plaintiffs have such other and further relief in law and in equity as is deemed just in the premises; and

7. That the costs of Court incurred in this proceeding be put upon defendant.

TOM CARTER, Counsel for Plaintiffs

1726 Fulton National Bank Building
Atlanta, Georgia 30303

688-7026

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MATHEW S. JASINSKI, EDWARD BOROWIK, MAX R. SHELTON, JOHN R. THOMAS, GEORGE WIMBERLY, JOHN GOODLEFSKY, STEPHEN J. KRATZ, PHILLIP BEAULIEU, M.D. URRA, J. STEWART HARRISON, JOHN W. ROACH, JR., and CHARLES K. JOHNSON,	:	
Plaintiffs,	:	CIVIL ACTION NO.
vs.	:	C74-1780A
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS,	:	
Defendants.	:	

MOTION TO DISMISS

The defendant, International Association of Machinists and Aerospace Workers moves to dismiss:

1.

Because the Court does not have jurisdiction over the subject matter of the Complaint;

2.

Because the Complaint fails to state a claim upon which relief may be granted.

Respectfully submitted,

ADAIR, GOLDTHWAITE, STANFORD & DANIEL

BY: J. R. Goldthwaite, Jr.

J. R. Goldthwaite, Jr.
Robert Giolito

600 Rhodes-Haverty Building
Atlanta, Georgia 30303
(404)523-2525

CERTIFICATE OF SERVICE

Copy of the within motion to dismissand memorandum in support of the motion have been served upon Tom Carter, attorney for plaintiffs, by mail. This October 21, 1974.

J. R. Goldthwaite, Jr.

J. R. Goldthwaite, Jr.

Copies sent to:
Pappas - Frank Rice
J. T. Cates, Hefner
Ronnie Kilpatrick - Dist 1690
A C Summers - 90 B4 Estad